

**MASTER AGREEMENT FOR ON-CALL
ENVIRONMENTAL PLANNING CONSULTING SERVICES
BETWEEN
THE CITY OF MILPITAS
AND
LSA ASSOCIATES**

This Master Agreement ("Agreement") is made and entered into this 6th day of November, 2013 ("Effective Date"), by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "CITY"), and LSA ASSOCIATES, INC., a California corporation (hereinafter "CONSULTANT"). CITY and CONSULTANT are hereafter individually referred to as a "Party" and hereafter collectively referred to as the "Parties."

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure additional professional services regarding technical expertise in the areas of environmental planning and consulting; and

WHEREAS, CITY solicited qualification proposals from various environmental consulting firms to provide assistance on an "as-needed basis." The scope of work for said services (hereafter "SCOPE OF SERVICES ") is attached hereto as **Exhibit A** and is hereby incorporated by reference; and

WHEREAS, CONSULTANT submitted its qualifications to CITY to provide on-call environmental planning and consulting services on an as-needed basis and is one of several CONSULTANTs selected by CITY to provide services; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform such services required by this Agreement; and

WHEREAS, the purpose of this Agreement is to retain CONSULTANT CITY to perform those services specified in SECTION 1 of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, CITY and CONSULTANT hereby agree as follows:

SECTION 1. SCOPE OF SERVICES.

- A. CITY will notify CONSULTANT when it needs environmental services that it believes CONSULTANT is qualified to perform. Nothing herein obligates CITY to notify CONSULTANT about every project requiring environmental consulting services. Upon notification from CITY, CONSULTANT will prepare a Scope of

Services containing a list of the tasks to be performed and a budget associated with those tasks which, which will be attached to a Service Order as set forth in **Exhibit F**.

- B. CONSULTANT will diligently perform the tasks outlined in the agreed upon Service Order and Scope of Services attached hereto as **Exhibit A** to this Agreement.

SECTION 2. TERM OF AGREEMENT.

The term of this Agreement shall begin on the Effective Date and expire on November 6, 2018, inclusive, subject to the provisions of SECTION 11 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in **Exhibit B** entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein.

SECTION 4. COMPENSATION.

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION Dollars (\$1,000,000.00). The rate and schedule of payment is set out in **Exhibit C** entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures if any. All work is subject to CITY review and approval prior to payment.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY'S employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. 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.

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. ASSIGNABILITY.

The Parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT'S obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

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 sole 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 9. INSURANCE REQUIREMENTS.

CONSULTANT agrees to have and maintain the policies set forth in **Exhibit D** entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the CITY of Milpitas as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this Agreement, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this Agreement immediately upon written notice.
- C. CITY's Director of Planning & Neighborhood Services ("CITY's Director") is empowered to terminate this Agreement on behalf of CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this Agreement, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and CONSULTANT agree that the law governing this Agreement shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. 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.

SECTION 14. COMMUNICATION PROTOCOL.

When engaged in environmental CONSULTANT work for the CITY on private development proposals, all communication between the private developer/project applicant and the CITY shall be through CITY staff. Under no circumstances shall the environmental CONSULTANT communicate directly with the private developer/project applicant without prior authorization of CITY staff.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAIVER.

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 17. CONSULTANT'S BOOKS AND RECORDS.

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this Agreement.
- B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the CITY Attorney, CITY Auditor, CITY Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at CITY Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT'S address indicated for receipt of notices in this Agreement.

- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT'S business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in CITY Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT'S representatives, or CONSULTANT'S successor-in-interest.

SECTION 18. 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.

CONSULTANT agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

SECTION 19. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in **Exhibit D** entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 20. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: CITY of Milpitas -- Planning
Attn: Steve McHarris
455 East Calaveras Blvd.
Milpitas, CA 95035

To CONSULTANT: LSA ASSOCIATES, INC.
Attn: Shannon Allen
2215 Fifth Street
Berkeley, CA 94710

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 21. VENUE.

In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, Milpitas, California.

SECTION 22. PRIOR AGREEMENTS AND AMENDMENTS.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.

SECTION 23. SUBCONSULTANTS

- A. Notwithstanding Section 7 above, CONSULTANT may use subconsultant(s) in performing the following work under this AGREEMENT.
- B. CONSULTANT shall be responsible for directing the work of the subconsultant(s) and for any compensation due to subconsultant(s). CITY assumes no responsibility whatsoever concerning such compensation.
- C. CONSULTANT shall employ subconsultant(s) only with the written approval of the CITY'S Director.

SECTION 24. 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.

SECTION 25. 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.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF MILPITAS, a municipal corporation

MICHAEL J. OGAZ
CITY Attorney

By _____
THOMAS WILLIAMS
CITY Manager

Date _____

LSA ASSOCIATES, INC.
A California corporation

20 Executive Park, Suite 200
Irvine, CA 92614

By *Les Cara*
Print Name: Les Cara

Title: CEO/Chairman

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EXHIBIT A

SCOPE OF SERVICES

CONSULTANT shall provide to the CITY's Department of Planning and Neighborhood Services on-call environmental consulting services for various CITY initiated and/or private development projects, on an as needed basis. CONSULTANT'S services shall be provided as requested by the CITY's Planning Director on an as needed basis, as set forth in a specific project Service Order in the form attached as Exhibit F to this Agreement.

SECTION 1. GENERAL PROVISIONS

- A. CONSULTANT shall perform all services to the satisfaction of the CITY'S Planning Director.
- B. All of the services furnished by the CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among environmental CONSULTANT professionals of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.
- C. All work performed under this AGREEMENT shall be authorized by a specific Service Order. Each Service Order given by CITY shall detail the nature of the specific services to be performed by the CONSULTANT, the time limit within which such services must be completed and the compensation for such services. Such details shall include a description of the project for which CONSULTANT shall perform the services, the geographic limits of the project, the type and scope of services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. CONSULTANT shall not perform any services unless authorized by a fully executed Service Order. Any unauthorized services performed by CONSULTANT shall be at no cost to the CITY.
- D. CONSULTANT shall begin work under the service order only after receipt of the service order bearing the approval signature of the Director and the signature of the CITY Attorney approving the service order as to form. Each authorized Service Order issued under this AGREEMENT by CITY shall be incorporated into the terms and conditions of this AGREEMENT.
- E. CITY will assign a Project Manager to facilitate each Service Order authorized under this AGREEMENT. CONSULTANT shall coordinate with the designated Project Manager on the performance of each Service Order.

- F. CONSULTANT shall be responsible for the coordination with CITY and federal, state and local agencies that are necessary for all services authorized under this AGREEMENT.
- G. **Assignment of Personnel.** CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. The Service Order may name any specific personnel who shall be performing services. In the event that CITY, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, CONSULTANT shall, immediately upon receiving notice from CITY of such desire of CITY, reassign such person or persons.

SECTION 2. BASIC SERVICES.

- A. CONSULTANT shall provide environmental consulting services for various CITY and private development projects, as more particularly described in the authorized Service Order. The authorized Service Order may include any of the specific environmental tasks set forth below in Section 3. The authorized Service Order may also include any other environmental services described and agreed to be performed by the CONSULTANT, including, but not limited to, the following:
 - I. Input regarding environmental and land use compatibility issues during the initial evaluation of the project; and
 - II. Preparation of the appropriate program or project-level analysis and documents for each as necessary to comply with the CITY's environmental requirements, the requirements of the California Environmental Quality Act and its implementing regulations and guidelines, and/or, if necessary, the requirements of the National Environmental Policy Act and its implementing guidelines; and
 - III. Assist in public outreach efforts including public notification, coordination of the Office of Planning and Research (OPR) community meeting facilitation, and responding to public comments.

B. Service Initiation

Prepare Service Order - Upon request of CITY's Project Manager, CONSULTANT shall meet with the Project Manager to discuss the Project. CONSULTANT shall become familiar with the Project description, scope and goals and develop proposed scope of services.

CONSULTANT shall prepare a proposed scope of work for Project services consistent with CITY'S standard form of Service Order (attached hereto as **Exhibit F**). The proposed scope of services shall, at a minimum, include the following: Project Description, Scope of Services including deliverables, and

Schedule of Performance and Schedule of Compensation. CONSULTANT shall submit the proposed scope of services to the Project Manager in electronic format.

The Project Manager will review and comment on proposed scope of work, and the parties shall agree on the terms of the final Service Order. CONSULTANT shall not be compensated for work performed in preparing a draft scope of services for a Service Order.

C. Service Implementation

Upon receipt of an authorized Service Order, CONSULTANT shall begin Project services described in the Service Order in accordance with the Schedule of Performance in the Service Order. For each Project, in addition to the specified services, products and deliverables detailed in the Service Order, CONSULTANT shall perform the following tasks:

Initial Meeting - Prior to beginning substantive work on a project, CONSULTANT shall meet and/or confer with CITY to establish procedures and notifications for any necessary meetings and communications with CITY staff; collect available data from the CITY and establish additional data needs and availability; confirm the format for all project products and deliverables; and address any preliminary project concerns. The meeting will be the primary opportunity to discuss the CITY'S intent, schedule and budget for the project.

The CONSULTANT shall prepare minutes of the meeting and distribute minutes to meeting participants.

Project Coordination Meetings - CONSULTANT shall attend and/or conduct project coordination meetings as required to perform authorized services and as required by Project Manager. CONSULTANT shall prepare minutes of each meeting and distribute minutes to participants.

Project Schedule - CONSULTANT shall prepare and submit a detailed schedule of performance consistent with the schedule contained in the Service Order to the Project manager for review and approval. CONSULTANT shall confirm or update the schedule monthly at a minimum. Any changes to the schedule shall only be permitted with the written approval of CITY'S Project Manager.

Project Progress Report - CONSULTANT shall submit a monthly report to the Project Manager detailing progress on the Project services.

Request for Payment / Invoice - CONSULTANT shall submit progress payment invoices to the Project Manager monthly, as specified in **Exhibit C**. The updated Project schedule and progress report may be submitted as attachments to the invoice.

Project Record - CONSULTANT shall develop and maintain a detailed record of the chronology of the project tasks and milestones completed that are decisive,

conclusive or relevant to the outcome of the Project. CONSULTANT shall submit a copy of the Project Record to the Project Manager prior to final payment for services performed on the Project. The Record shall be submitted in both paper and electronic format.

Project Documents - Aside from deliverables specified in the Service Order, and before the conclusion of the Project and final payment for services performed on the Project, CONSULTANT shall submit to the Project Manager a copy of all project documents that are decisive, conclusive or relevant to the outcome of the Project. Such documents may include, without limitation, topographical surveys and mapping, utility mapping, site inventories, base plans, reports and studies, permit applications and permits, environmental documentation, records of meetings, and communication documents. Documents shall be submitted in both paper and electronic format, as available.

SECTION 3. SPECIFIC ENVIRONMENTAL SERVICES.

- A. In addition to any other environmental services contained in the authorized Service Order, the Service Order may incorporate any of the services set forth below in this Section 3 by simply identifying the particular Task, in which case the Task is considered to have been incorporated into the authorized Service Order and CONSULTANT shall perform the Task as set forth herein.
- B. Tasks: Listed below are the Tasks which may be included in the Service Order depending on the scope of the project.

Task 1 - CEQA Documentation and Clearance

CONSULTANT shall prepare an Initial Study ("IS") and Mitigated Negative Declaration ("MND") for the Project to the satisfaction of the Director of Planning and Neighborhood Services. For purposes of this task, the CITY is assuming that a mitigated negative declaration is a sufficient and appropriate level of environmental review. If preparation of the IS leads the CONSULTANT to conclude that some other level of environmental review is needed, then CONSULTANT shall stop all work under this Service Order and consult with the CITY on how to proceed.

CONSULTANT shall prepare an Administrative Draft Initial Study/Mitigated Negative Declaration ("ADIS/MND") for the Project, in accordance with California Environmental Quality Act (CEQA) and CITY requirements. The ADIS/MND will describe in detail the Project, the regulatory setting, the existing environmental conditions on the Project site, and assess potentially significant impacts associated with the Project. The impact analysis will apply specific thresholds for determining the significance of impacts, consistent with CEQA, and other applicable standards. The analysis will identify all potential environmental impacts of the Project, including direct, indirect, temporary, and permanent. The CONSULTANT will identify mitigation measures for the significant impacts.

The ADIS/MND will contain the following required items: 1) Project Description, 2) Environmental Setting, Impacts and Mitigation 3) Mitigation Monitoring and Reporting Program; 4) List of Preparers; 5) References; 6) Appendices; and 7) appropriate graphics.

CONSULTANT will prepare the ADIS/MND in accordance with CEQA and the CITY requirements.

~~CITY shall obtain names and addresses of contiguous property owners within the required distance from Project site and provide appropriate notice of the Project to such property owners.~~

CONSULTANT shall revise the ADIS/MND based on comments received from the CITY and prepare the Initial Study/Mitigated Negative Declaration ("IS/MND"). Upon approval of the document by the CITY, CONSULTANT shall submit black and white copies of the IS/MND to the State Clearinghouse for processing and public circulation and submit copies to the CITY for local agency distribution. CITY will provide the Notice of Completion to accompany the copies. CONSULTANT shall submit one PDF copy of the IS and each technical report formatted to the CITY's specifications.

Upon conclusion of the 30-day public review period for the IS/MND, CONSULTANT shall prepare written responses to any comments received on the IS/MND, in coordination with the CITY.

After the 30 day review period and as directed by the CITY, CONSULTANT shall prepare a Mitigation and Monitoring Reporting Program for the Project in the format determined by the CITY. The monitoring program shall identify responsibility, timing, funding, and reporting of mitigation measures identified in the DIS.

Task 2 - NEPA Documentation and Clearance

If necessary, CONSULTANT shall provide National Environmental Policy Act (NEPA) documentation in accordance with the Council on Environmental Quality (CEQ) requirements. CONSULTANT shall prepare the following analysis (in addition to CEQA); the specific requirements of such analysis shall be done in accordance with the regulations of the NEPA administering agency (e.g. Caltrans, FTA, HUD, CDBG, etc.):

- Purpose and Need
- Section 106 and 4f Evaluation for Cultural Resources and Park and Historic Resources
- Floodplain Management and Wetland Evaluation per Executive Orders 11998 and 11990
- Environmental Justice Evaluation per Executive Order 12898
- NEPA noticing, e.g. Notice of Intent (stone as Notice of Preparation for an Environmental Impact Report)

- Natural Environmental Studies as required for biology for FHWA/Caltrans projects

Task 3 - Archaeological Survey

If necessary, CONSULTANT shall prepare an Archaeological Survey Report (ASR) and Historic Properties Survey Report (HPSR) - short form. The report shall be prepared by a qualified historian and/or archaeologist. These studies will require the CONSULTANT to perform the following tasks: 1) establishment of the anticipated Area of Potential Effect (APE), 2) complete archival research, 3) field survey and inventory, and 4) findings/recommendations.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 4 -Air Quality Evaluation

If necessary, CONSULTANT shall prepare an Air Quality evaluation. It will describe the regulatory setting for air quality policy set forth by the California Air Resources Board and the Bay Area Air Quality Management District (BAAQMD). CONSULTANT shall perform the air quality evaluation in accordance with the most current State BAAQMD CEQA guidelines applicable to such evaluations. The CONSULTANT shall identify mitigations as necessary.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 5 - Traffic Study/Impact Report

If necessary, CONSULTANT shall prepare a traffic study/impact report for the Project. CONSULTANT shall conduct a transportation impact analysis (TIA) as required by the CITY to evaluate traffic and/or parking impacts of the Project. If the TIA for the proposed Project shows that the proposed Project will generate more than 100 net new peak-hour trips on a typical weekday, the CONSULTANT shall prepare a Congestion Management Program (CMP) analysis in accordance with CITY guidelines.

CONSULTANT shall submit two draft copies of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 6 - Noise Report

If necessary, CONSULTANT shall prepare a noise report that describes the regulatory setting for controlling environmental noise, as set forth by the State of California and CITY noise standards.

CONSULTANT shall calculate the operational noise level at the Project site, and evaluate the operational noise level against the most current noise standards of the CITY and/or of those most current applicable noise standards of any other regulatory agencies. If the operational noise level exceeds the CITY's or those applicable noise standards of another regulatory agency, whichever is lower, CONSULTANT shall develop noise mitigation measures to achieve compliance with the standards. CONSULTANT shall prepare and submit a report of the Noise Studies to the CITY.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 7 - Biological Assessment Report

If necessary, CONSULTANT shall prepare a report which will identify the biological resources of the Project site, and assess potential impacts from the Project on these resources, based on a Natural Environment Study (NES) in accordance with the most current CEQA requirements, if CEQA is applicable to the Project, or NEPA requirements, if NEPA is applicable to the Project, and as directed by the CITY. The report shall be prepared by a qualified biologist. The discussion in the report will include a description of the regulatory environment, including but not limited to, requirements of U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, National Marine Fisheries Service, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and California Department of Fish & Wildlife. The report will address the potentially significant impacts of the Project on biological resources.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 8 - Wetlands Delineation

If necessary, CONSULTANT shall prepare a wetlands delineation report per the most current U.S. Army Corp of Engineers requirements applicable to the preparation of such reports and as directed by the CITY.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 9 - Health Risk Assessment

If necessary, CONSULTANT shall prepare a site-specific Health Risk Assessment that will address potential human health impacts to the future users of the Project arising from the presence of the hazardous material found at the Project site. The Health Risk Assessment ("HRA") will be prepared by a

toxicologist. CONSULTANT shall prepare the HRA in accordance with the most current Cal/EPA Supplemental Guidance for Human Health Multimedia Risk Assessments for Hazardous Waste Sites and Permitted Facilities (Cal/EPA 1996) regulations, and to the satisfaction of the Department of Planning and Neighborhood Services. The HRA will consider compound concentrations, transport and fate of compounds, exposure pathways, and property use. The HRA will involve the following steps:

- The selection of chemicals of concern
- Exposure assessment
- Toxicity assessment
- Risk characterization

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 10 - Phase I Environmental Site Assessment

If necessary, CONSULTANT shall perform a Phase I Environmental Site Assessment to identify potential presence of hazardous substances and soil or groundwater contamination on the site. CONSULTANT shall perform the Phase I Environmental Site Assessment per the most current American Society for Testing Materials (ASTM) guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 11 - Phase II Environmental Site Assessment

If necessary, CONSULTANT shall perform a Phase II Environmental Site Assessment on the Project site. CONSULTANT shall perform the Phase II Environmental Site Assessment per the most current ASTM guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 12 - Habitat Mitigation and Monitoring Plan (HMMP) Report

If necessary, CONSULTANT shall prepare a Habitat Mitigation and Monitoring Plan Report that identifies the mitigation measures for the Project needed to avoid those habitat impacts discussed in the CEQA document. The HMMP shall include mitigation measures as necessary, as per previous related studies and as per meetings with the CITY. The CONSULTANT shall coordinate the preparation of the Habitat Mitigation and Monitoring Plan with the CITY. The

CONSULTANT shall attend a total of two (2) meetings with the CITY in this task to review changes to HMMP and coordinate the preparation of the Plan. The HMMP shall be prepared in a format as directed and approved by the CITY and in coordination with the CITY Planning and Neighborhood Services Department

The CONSULTANT shall review the content of the Mitigation and Monitoring Plan with the CITY and identify features that are expected to be required by the CITY and regulatory agencies (e.g. riparian vegetation for CDFW 1601 agreement; wetland impact minimization measures for COE Nationwide Permit; water quality protection features for RWQCB permit).

CONSULTANT shall prepare the Habitat Mitigation and Monitoring Plan in a format acceptable to the regulatory agencies and to the CITY, and shall include tables, plans, graphics and other pertinent related information. The CONSULTANT shall prepare draft Project goals and a Draft Mitigation and Monitoring Outline and submit two (2) copies to the CITY for review comments and approval.

CONSULTANT shall revise the draft goals and draft Plan outline as per CITY and other regulatory agencies review and comments. Based on the draft Plan outline and project goals, the CONSULTANT shall prepare a Draft Habitat Mitigation and Monitoring Plan and submit it to the CITY for review, comments and approval. CONSULTANT shall submit four (4) copies to the CITY. All plans and graphics shall be clear and concise. Base source maps shall be based on sources approved by the CITY. The Plan shall describe the goals of the habitat mitigation, the features of the mitigation site, a detailed implementation plan (i.e. site preparation techniques, schematic planting plan, schedule), establishment success criteria, and maintenance and monitoring activities.

CONSULTANT shall develop and include in the Habitat Mitigation and Monitoring Plan a preliminary habitat mitigation/revegetation plant list based on the expected type and size of habitat mitigation for the Project. The CONSULTANT shall submit the preliminary plant list to the CITY for review and approval. The plant list shall be a part of the Habitat Mitigation and Monitoring Plan.

The CONSULTANT shall prepare and submit to the CITY a pre-final "screencheck" of the Final Habitat Mitigation and Monitoring Plan based on comments from the CITY. The CONSULTANT shall submit two (2) copies to the CITY for review and approval. Upon review and approval by the CITY, the CONSULTANT shall prepare and submit to the CITY the Final Habitat Mitigation and Monitoring Plan. The CONSULTANT shall submit ten (10) copies, one camera ready (an original copy which can be clearly duplicated, including half tone copies of photographic graphics as directed by the CITY) copy, and one electronic copy to the CITY. The scope of services assumes that there will not be substantive changes to the mitigation site or mitigation design between the draft and screen-check final reports, such as a change in the size or location of the mitigation site(s).

Task 13 - Pre-construction Burrowing Owl Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a preconstruction survey for Burrowing Owls in accordance with the most current California Department of Fish and Wildlife (CDFW) survey protocol. The preconstruction survey shall be conducted by a qualified wildlife biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY. The CONSULTANT shall submit the results of the pre-construction survey to the CDFW for review and approval prior to site construction.

If, as a result of the survey, the CONSULTANT finds one or more active nests within the project area, the CONSULTANT shall have a qualified wildlife biologist mark the outside perimeter edge of a 250 feet buffer around each active nest with plastic fencing ("Buffer Area"). Prior to commencement of construction activities, the CONSULTANT shall have a qualified wildlife biologist inform the CITY's contractor and the contractor's workers of the presence of Burrowing Owls, their protected status, work boundaries, and measures to be implemented to avoid loss of these species during construction activities. The qualified wildlife biologist shall inform the construction workers that no construction activities are to occur within the Buffer Area until directed.

If pre-construction surveys are conducted during the non-breeding season and burrowing owls are observed on the site, the CONSULTANT shall consult with CDFW on burrowing owl eviction only after the habitat mitigation plan and mitigation agreement have been finalized between CDFW and the CITY.

Task 14 - Pre-Construction Nesting Raptor and Migratory Nesting Bird Survey.

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a pre-construction survey for nesting raptors and migratory nesting birds to determine if they occur within the project site in accordance with the most current CDFW protocol. The pre-construction survey shall be conducted by a qualified wildlife biologist. If raptors or migratory nesting birds are nesting on the site, the wildlife biologist shall recommend to the CITY a suitable buffer area between the nest

site and construction activity. The wildlife biologist shall document that the young have fledged prior to construction work occurring within the buffer area. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 15 - Pre- Construction Bats Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading, demolition, or construction, whichever occurs first, the CONSULTANT shall conduct pre-construction surveys for roosting bats in accordance with the most recent California Department of Fish and Wildlife (CDFW) protocols, if buildings or trees suitable for roosting bats are present on or within 50 feet of the construction site. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that bats are roosting on or within 50 feet of the construction site, the CONSULTANT shall consult with CDFW regarding the appropriate measures to minimize impacts to the roosting bats and provide this information to the CITY. Such measures may include maintenance of a disturbance-free buffer around an active maternity roost during the breeding season (generally 1 April to 31 August, or until the young are flying, whichever occurs first). If, as a result of the survey, the CONSULTANT finds roosting bats within structures or trees that will be physically disturbed by the Project, the CONSULTANT shall have a qualified wildlife biologist evict bats from those roosts during the non-breeding season (generally, 1 September to 31 March), in accordance with CDFW protocols. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 16 - Pre-Construction California Tiger Salamander Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct preconstruction surveys for California tiger salamanders in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by qualified wildlife biologist. If the pre-construction survey determines that California tiger salamanders are present on the construction site, the CONSULTANT shall consult with CDFW and U.S. Fish and Wildlife Services (USFWS) regarding the appropriate measures to take to avoid or minimize take of individuals and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds California tiger salamanders on the Project site,

the CONSULTANT shall have a qualified wildlife biologist implement any measures that have been approved by the CDFW and USFWS for that particular Project, such as relocation of individuals. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW, USFWS, and the CITY.

Task 17 - Pre-Construction Nesting Pond Turtle Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct a preconstruction survey for nesting pond turtles in accordance with the most recent CDFW protocols. The pre-construction survey shall be performed by a qualified wildlife biologist. If the CONSULTANT identifies a suitable nesting habitat, the CONSULTANT will direct the CITY on where and how to install an exclusionary fence so as to exclude turtles from entering the construction work area. The CITY will be responsible for installing the fence prior to pond-turtle breeding season. The CITY will be responsible for removing the fencing when directed by the biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 18 - Pre-Construction Nesting Woodrat Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct preconstruction surveys for nesting woodrats in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that woodrats are nesting on the construction site, the CONSULTANT shall consult with CDFW regarding the best method for relocation of the nest(s) and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds one or more nests within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the nests in accordance with CDFW protocol. CONSULTANT shall document the findings of the survey in letter format and, submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 19 - Pre-Construction Red-legged Frog Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No more than fourteen (14) calendar days prior to commencement of grading or construction, whichever occurs earlier, in the riparian habitat, the CONSULTANT shall conduct pre-construction surveys for red-legged frogs in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If CONSULTANT observes any red-legged frogs, the CONSULTANT shall consult with the US Fish and Wildlife Service (USFWS) on avoidance measures before construction work proceeds and provide the information to the CITY. If, as a result of the survey, the CONSULTANT finds red-legged frogs within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the red-legged frogs in accordance with CDFW protocol. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 20 - Archaeological Field Monitoring

If necessary, the CITY shall provide the CONSULTANT with the grading and excavation plans for the Project. CONSULTANT shall review the grading and excavation plans to determine Project impacts within potentially sensitive archaeological areas. The review shall be done by a qualified archaeologist. The archaeologist shall develop an archaeological Field Monitoring Plan that includes the frequency and duration of the monitoring based upon his/her proposed/expected construction monitoring observations. If any cultural materials are exposed or discovered during either site preparation or subsurface construction activities, the CITY will issue a separate service order for additional archaeological work. The archaeologist shall submit a report summarizing his/her monitoring activities and findings (two hard copies and one electronic copy) to the CITY. One copy shall be provided to Director of Planning and Neighborhood Services.

Task 21 - Evaluation of Potential Mitigation Areas

If necessary, the CITY and regulatory agencies with jurisdiction over the Project and the approval of a habitat mitigation site have approved and adopted a Habitat Mitigation and Monitoring Plan for the Project. CONSULTANT shall perform the following services with regard to evaluating potential mitigation sites.

CONSULTANT shall review a proposed habitat mitigation site and assess the site for its suitability to provide environmental habitat mitigation for the Project. CONSULTANT shall review and assess the proposed habitat mitigation site in accordance with all applicable regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction over the Project and approval of the

mitigation site, and as directed by the CITY. One field meeting with CITY staff shall be included in this task in order to review the potential mitigation site.

CONSULTANT shall prepare and submit a letter of findings (one hard copy and one electronic copy) that address the site's existing resources, its suitability to provide the required mitigation and the site's consistency with mitigation measures outlined in the Project's existing Habitat Mitigation and Monitoring Plan.

Task 22 - Hydraulic Study

If necessary, CONSULTANT shall prepare a Hydraulic Study for the Project in accordance with the regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction of the Project and as directed by the CITY. The report shall address, but not be limited to drainage, conveyance, water quality and Nonpoint Source (NPS) requirements.

CONSULTANT shall submit one draft of the study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft study.

Task 23 - Tree Survey

If necessary, CONSULTANT shall prepare a tree survey for the Project as directed by the CITY. The tree survey will consist of the CONSULTANT visiting the construction site one time and documenting all trees by species, diameter, and condition, in accordance with CITY's Arborist and CITY's tree survey form, which will be provided by the CITY.

CONSULTANT shall submit one draft of the survey and then a final survey (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey.

Task 24 - Greenhouse Gas (GHG) Emission

If necessary, CONSULTANT shall evaluate greenhouse gas emissions related to the proposed project. The net increase in emissions resulting from the project will be quantified using current URBEMIS software and the Bay Area Air Quality Management District's (BAAQMD) Greenhouse gas model (BGM) calculator. The project's emissions will be compared to BAAQMD's adopted greenhouse gas emissions thresholds. Measures incorporated into the project to reduce greenhouse gas emissions will be described, as appropriate.

CONSULTANT shall submit one draft of the greenhouse gas emissions study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft study.

END OF EXHIBIT A

EXHIBIT B

SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before November 6, 2018. Work shall be initiated on an as-needed basis at the request of CITY, and work shall be prosecuted pursuant to details defined in each specific Service Order, as set forth in EXHIBIT A above.

At the sole discretion of CITY, the term of this AGREEMENT may be extended up to six months by the CITY's Director by providing written notice to CONSULTANT.

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EXHIBIT C
COMPENSATION

Section 1. Maximum Compensation for Master Agreement.

1.1 Maximum Amount: The maximum amount of compensation the CITY will pay to the CONSULTANT under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION Dollars (\$1,000,000.00). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

1.2 Manner of Payment: Each Service Order will set forth whether the CITY will pay the CONSULTANT for work performed under such Service Order on a lump sum basis or on a time and material basis. Section 2 of this Exhibit applies to each Service Order where the CITY will pay the CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where the CITY will pay the CONSULTANT on a time and material basis for the work performed.

1.3 Schedule of Charges: Exhibit C-1 of this AGREEMENT, entitled "Schedule of Charges," set forth the CONSULTANT'S charge rates for various personnel as well as the amounts it charges for various special inspections and material tests. Regardless of whether the manner of payment contained in a Service Order is on a lump sum basis or on a time and material basis, compensation shall be determined and based upon the charge rates and charge amounts set forth in the Schedule of Charges. Charge rates will be updated on an annual basis.

Section 2. Lump Sum Payment.

2.1 Lump Sum Amount: The Service Order shall specify the lump sum amount the CITY will pay the CONSULTANT for performing the required work. The lump sum amount compensates the CONSULTANT for all its costs necessary to complete the work, including professional services and reimbursable expenses. CONSULTANT shall complete all work set forth in the Service Order for the lump sum amount.

2.2 Progress Payments: The Service Order may provide for the CITY to pay the lump sum amount by making progress payments. Under such circumstances, the Service Order shall specify appropriate milestones and the amount payable upon successful completion of each milestone. Upon completion of a milestone to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the appropriate progress payment. The CITY will make the appropriate progress payment to the CONSULTANT within thirty (30) days of the Director's approval of the CONSULTANT's invoice.

2.3 Lump-Sum Payment: If the Service Order does not provide for the CITY to make progress payments, then the CITY shall make a single, lump-sum payment to the CONSULTANT upon completion of all the work to the Director's satisfaction. Upon completion of the work to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the lump-sum amount. The CITY shall pay the lump-sum amount within thirty (30) days of the Director's approval of the CONSULTANT'S invoice.

Section 3. Payment on a Time and Materials Basis.

3.1 Maximum Compensation: The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional and special inspection services, material tests and reimbursable expenses. The CONSULTANT shall complete all work it is required to perform under the Service Order for no more than the specified maximum amount. Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

3.2 Budget: If the Service Order itemizes budget amounts for any phase or category of work, then CONSULTANT shall not exceed such itemized amount without the Director's prior written authorization. The Director may approve, in writing, transfers of budget amounts between any of the phases or categories of work listed in the Service Order, provided the aggregate total compensation does not exceed the maximum compensation.

3.3 Rates: CITY will compensate CONSULTANT at the rates set forth in Exhibit C-1 of this Master Agreement, entitled "Schedule of Charges." Wage rates subject to Prevailing Wage Requirements are subject to revision at the time of issuance of a new Determination and subsequent Determinations for the duration of the AGREEMENT consistent with the provisions of Exhibit "C-1." Rates not subject to Prevailing Wage Requirements are subject to review annually upon request of the CONSULTANT in accordance with the provisions of Exhibit "C-1." The parties must enter into a written amendment to this AGREEMENT to reflect any new rates before such rates become effective. The Director of Planning & Neighborhood Services is authorized to execute such an amendment.

3.4 Reimbursable Expenses: The CITY will reimburse for expenses subject to the following:

Each Service Order will specify the maximum amount of expenses for which the CITY will reimburse the CONSULTANT. The CITY will reimburse expenses and the costs of sub-consultants, at actual cost plus an eight percent (8%) markup, unless a lower markup is provided for in the Exhibit D-1 of this Master Agreement. Any expense the CONSULTANT incurs beyond the specified amount is at no cost to the CITY.

The following expenses are reimbursable to the extent the CONSULTANT documents to the Director's satisfaction that they were incurred in performing the work required by the Service Order: (a) the cost of mailing, shipping and/or

delivery of documents or products to the CITY, (b) the cost of photographing, reproducing and/or copying, (c) the cost of the sub-consultant, provided the Director has preapproved, in writing, the use and cost of the sub-consultant, (d) telephone and fax charges, (e) the rental of any specialized equipment to the extent the Director has preapproved, in writing, the cost of such rental, and (f) any other expenses expressly identified in the service order as reimbursable. No other expenses are reimbursable unless the Director has preapproved, in writing, such expense.

3.5 Travel Time: For Service Orders on a time and materials basis, CITY will pay time for travel to and from the site when appropriate. An estimate of travel time will be included and negotiated with each service order. CITY will provide the CONSULTANT a place to store CONSULTANT's equipment at the project site, if necessary.

3.6 Invoice: Every month the CONSULTANT shall invoice the CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed, the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amounts of payments received to date under the Service Order and the balance of maximum compensation for remaining work on the Service Order.

Section 4. Others.

4.1 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.

EXHIBIT C-1

SCHEDULE OF CHARGES
(CONSULTANT Hourly Rates)

HOURLY BILLING RATES
Effective June 2013

Job Classification							Hourly Rate Range ^{1,2}
Planning	Environmental	Transportation	Air/Noise	Cultural Resources	Biology	GIS	
Principal	Principal	Principal	Principal	Principal	Principal	Principal	\$125-300
Associate	Associate	Associate	Associate	Associate	Associate	Associate	\$85-200
Senior Planner	Senior Environmental Planner	Senior Transportation Planner/ Engineer	Senior Air Quality/ Noise Specialist	Senior Cultural Resources Manager	Senior Biologist/ Botanist/ Wildlife Biologist/ Ecologist/ Soil Scientist/ Herpetologist/ Arborist	Senior GIS Specialist	\$85-175
Planner	Environmental Planner	Transportation Planner/ Engineer	Air Quality/ Noise Specialist	Cultural Resources Manager	Biologist/Botanist/ Wildlife Biologist/ Ecologist/Soil Scientist/ Herpetologist/ Arborist	GIS Specialist	\$70-125
Assistant Planner	Assistant Environmental Planner	Assistant Transportation Planner/ Engineer	Air Quality/ Noise Analyst	Cultural Resources Analyst	Assistant Biologist/Botanist/ Wildlife Biologist/ Ecologist/Soil Scientist/ Herpetologist/ Arborist	Assistant GIS Specialist	\$55-90
Field Services							
Senior Field Crew/Field Crew							\$50-85
Office Services							
Research Assistant/Technician							\$35-60
Graphics							\$90-120
Office Assistant							\$60-90
Word Processing/ Technical Editing							\$75-95

¹ The hourly rate for work involving actual expenses in court, giving depositions or similar expert testimony, will be billed at \$400 per hour regardless of job classifications.

² Hourly rates are subject to review at least annually, on or about June 1 of each year, and may be adjusted to reflect changing labor costs at LSA's discretion at that time.

EXHIBIT D

INSURANCE

CONTRACTOR, at CONTRACTOR'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

Definition:

For purposes of this contract, the following definition applies: CITY of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the CITY of Milpitas, individually or collectively.

Insurance Required:

CONSULTANT must procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the contract and the results of that work by the CONSULTANT, his agents, representatives, employees or sub-consultants and provide documentation of same prior to commencement of work. The insurance must be maintained for the duration of the contract.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be at least as broad as:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability.
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (X) Professional Liability or Errors & Omissions Liability insurance appropriate to the CONSULTANT's profession.

Minimum Limits of Insurance:

CONSULTANT must maintain limits no less than:

1. **General Liability:** **\$1,000,000** per occurrence for bodily injury, personal (Including operations, injury and property damage. If Commercial General products and Liability insurance with a general aggregate limit is completed operations, used, either the general aggregate limit must apply as applicable.) separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
2. **Automobile Liability:** **\$1,000,000** per accident for bodily injury and property damage.

- | | |
|---|---|
| 3. Workers' Compensation | Statutory |
| Employer's Liability: | \$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee |
| 4. Professional Liability or Errors & Omissions Liability: | \$ 500,000 each occurrence
\$1,000,000 policy aggregate |

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the CITY, its officers, officials, employees and volunteers; or the CONSULTANT will provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The CITY of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the **CONSULTANT's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the CITY, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the CITY. This provision also applies to the CONSULTANT's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail,

return receipt requested, has been given to the CITY. If CONSULTANT's insurer refuses to provide this endorsement, CONSULTANT shall be responsible for providing written notice to the CITY that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

Sub-Consultants:

CONSULTANTS must include all sub-CONSULTANTS as insured under its policies or furnish separate certificates and endorsements for each sub-CONSULTANT. All coverage for sub-CONSULTANTS are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the CONSULTANT allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the CONSULTANT shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONSULTANT's delay and shall not be considered to increase cost to the CITY or increase time in which the Project shall be completed.

CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect, CITY may immediately terminate this Agreement.

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EXHIBIT E

SPECIAL PROVISIONS

In the performance of this AGREEMENT:

1. Prohibition on Discrimination and Preferential Treatment

CONSULTANT shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by CITY, CONSULTANT shall file, and cause any subcontractor to file, compliance reports with the CITY. Compliance reports shall be in the form and filed at such times as may be designated by the CITY. Compliance reports shall contain such information and be supported by such data or records as may be requested by the CITY to determine whether CONSULTANT or its subcontractor is complying with the nondiscrimination and non-preference provisions of this Agreement.

3. Failure to Comply With Nondiscrimination Provisions.

If the CITY determines that the CONSULTANT has not complied with the nondiscrimination or non-preference provisions of this AGREEMENT, the CITY may terminate or suspend this AGREEMENT, in whole or in part.

4. Subcontracts.

CONSULTANT shall include provisions of this Agreement in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

5. Prevailing Wage. CONSULTANT acknowledges that portions of this contract are a Public Work, subject to the provisions of Section 1771 of the California Labor Code. CONSULTANT shall pay, or cause to be paid, prevailing wages, as set forth in the California Labor Code Section 1770

et. seq., for all labor performed on the Project sites to facilitate the professional services provided under this AGREEMENT, including, but not limited to inspection, surveying, drilling, trenching, and excavation. CONSULTANT shall include in all agreements for such labor, a requirement that the employer provide all workers with written notice that prevailing wages apply.

CONSULTANT shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages as required by the State prevailing wage law. CONSULTANT shall provide to the CITY, at no cost to the CITY, a copy of all such records within ten (10) working days of a request for such records by CITY.

CONSULTANT expressly agrees that the compensation agreed to between the parties includes all payment necessary to meet State prevailing wage law requirements. CONSULTANT shall indemnify the CITY for any claims, costs or expenses which the CITY incurs as a result of CONSULTANT'S failure to pay, or cause to be paid, prevailing wages.

6. **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. **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.

EXHIBIT F
SERVICE ORDER

1 CONSULTANT MASTER AGREEMENT

This Service Order is made and entered into by and between the CITY OF MILPITAS, a municipal corporation of the State of California and LSA ASSOCIATES, INC., a California corporation. CITY and CONSULTANT have entered into a Master Service Agreement dated November 6, 2013 which authorizes the proposed services and compensation as outlined below.

2 SERVICE ORDER

Service Order No: _____ Date: _____

Service Order Compensation Amount: \$ _____

CONSULTANT Firm Name: _____

Address: _____

Contact: _____

Phone/Email: _____

3 PROJECT DESCRIPTION

Project Name: _____

Brief Description of Services: _____

Exhibit A: *Attach Full Scope of Services, Schedule of Performance and Compensation*

4 APPROVALS

CONSULTANT: _____ Date: _____

Assistant CITY Attorney: _____ Date: _____

Director of Planning: _____ Date: _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated, and that funds are available as of this date of signature.

Authorized Signature: _____ Date: _____



**MASTER AGREEMENT FOR ON-CALL
ENVIRONMENTAL PLANNING CONSULTING SERVICES
BETWEEN
THE CITY OF MILPITAS
AND
RBF CONSULTING**

This Master Agreement ("Agreement") is made and entered into this 6th day of November, 2013 ("Effective Date"), by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "CITY"), and RBF CONSULTING, a California Corporation, (hereinafter "CONSULTANT"). CITY and CONSULTANT are hereafter individually referred to as a "Party" and hereafter collectively referred to as the "Parties."

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure additional professional services regarding technical expertise in the areas of environmental planning and consulting; and

WHEREAS, CITY solicited qualification proposals from various environmental consulting firms to provide assistance on an "as-needed basis." The scope of work for said services (hereafter "SCOPE OF SERVICES ") is attached hereto as **Exhibit A** and is hereby incorporated by reference; and

WHEREAS, CONSULTANT submitted its qualifications to CITY to provide on-call environmental planning and consulting services on an as-needed basis and is one of several CONSULTANTS selected by CITY to provide services; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform such services required by this Agreement; and

WHEREAS, the purpose of this Agreement is to retain CONSULTANT CITY to perform those services specified in SECTION 1 of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, CITY and CONSULTANT hereby agree as follows:

SECTION 1. SCOPE OF SERVICES.

- A. CITY will notify CONSULTANT when it needs environmental services that it believes CONSULTANT is qualified to perform. Nothing herein obligates CITY to notify CONSULTANT about every project requiring environmental consulting services. Upon notification from CITY, CONSULTANT will prepare a Scope of

Services containing a list of the tasks to be performed and a budget associated with those tasks which, which will be attached to a Service Order as set forth in **Exhibit F**.

- B. CONSULTANT will diligently perform the tasks outlined in the agreed upon Service Order and Scope of Services attached hereto as **Exhibit A** to this Agreement.

SECTION 2. TERM OF AGREEMENT.

The term of this Agreement shall begin on the Effective Date and expire on November 6, 2018, inclusive, subject to the provisions of SECTION 11 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in **Exhibit B** entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein.

SECTION 4. COMPENSATION.

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION Dollars (\$1,000,000.00). The rate and schedule of payment is set out in **Exhibit C** entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures if any. All work is subject to CITY review and approval prior to payment.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY'S employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. 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.

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. ASSIGNABILITY.

The Parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT'S obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

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 sole 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 9. INSURANCE REQUIREMENTS.

CONSULTANT agrees to have and maintain the policies set forth in **Exhibit D** entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the CITY of Milpitas as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this Agreement, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this Agreement immediately upon written notice.
- C. CITY's Director of Planning & Neighborhood Services ("CITY's Director") is empowered to terminate this Agreement on behalf of CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this Agreement, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and CONSULTANT agree that the law governing this Agreement shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. 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.

SECTION 14. COMMUNICATION PROTOCOL.

When engaged in environmental CONSULTANT work for the CITY on private development proposals, all communication between the private developer/project applicant and the CITY shall be through CITY staff. Under no circumstances shall the environmental CONSULTANT communicate directly with the private developer/project applicant without prior authorization of CITY staff.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAIVER.

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 17. CONSULTANT'S BOOKS AND RECORDS.

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this Agreement.
- B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the CITY Attorney, CITY Auditor, CITY Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at CITY Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT'S address indicated for receipt of notices in this Agreement.
- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT'S business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in CITY Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT'S representatives, or CONSULTANT'S successor-in-interest.

SECTION 18. 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.

CONSULTANT agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

SECTION 19. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in **Exhibit D** entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 20. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: CITY of Milpitas -- Planning
Attn: Steve McHarris
455 East Calaveras Blvd.
Milpitas, CA 95035

To CONSULTANT: RBF CONSULTING
Mr. Glenn Lajoie, AICP
Vice President, Planning and Environmental
Services
14725 Alton Parkway
Irvine, CA 92618-2027

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 21. VENUE.

In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, Milpitas, California.

SECTION 22. PRIOR AGREEMENTS AND AMENDMENTS.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.

SECTION 23. SUBCONSULTANTS

- A. Notwithstanding Section 7 above, CONSULTANT may use subconsultant(s) in performing the following work under this AGREEMENT.
- B. CONSULTANT shall be responsible for directing the work of the subconsultant(s) and for any compensation due to subconsultant(s). CITY assumes no responsibility whatsoever concerning such compensation.
- C. CONSULTANT shall employ subconsultant(s) only with the written approval of the CITY'S Director.

SECTION 24. 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.

SECTION 25. 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.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

"CITY"

APPROVED AS TO FORM:

CITY OF MILPITAS, a municipal
corporation

MICHAEL J. OGAZ
CITY Attorney

By _____
THOMAS WILLIAMS
CITY Manager

Date _____

RBF Consulting, a California Corporation
Glenn Lajoie, AICP
Vice President, Planning and
Environmental Services
14725 Alton Parkway
Irvine, CA 92618-2027

By 

Print Name: Glenn Lajoie

Title: Vice President, Planning and
Environmental Services

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EXHIBIT A

SCOPE OF SERVICES

CONSULTANT shall provide to the CITY's Department of Planning and Neighborhood Services on-call environmental consulting services for various CITY initiated and/or private development projects, on an as needed basis. CONSULTANT'S services shall be provided as requested by the CITY's Planning Director on an as needed basis, as set forth in a specific project Service Order in the form attached as Exhibit F to this Agreement.

SECTION 1. GENERAL PROVISIONS

- A. CONSULTANT shall perform all services to the satisfaction of the CITY'S Planning Director.
- B. All of the services furnished by the CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among environmental CONSULTANT professionals of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.
- C. All work performed under this AGREEMENT shall be authorized by a specific Service Order. Each Service Order given by CITY shall detail the nature of the specific services to be performed by the CONSULTANT, the time limit within which such services must be completed and the compensation for such services. Such details shall include a description of the project for which CONSULTANT shall perform the services, the geographic limits of the project, the type and scope of services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. CONSULTANT shall not perform any services unless authorized by a fully executed Service Order. Any unauthorized services performed by CONSULTANT shall be at no cost to the CITY.
- D. CONSULTANT shall begin work under the service order only after receipt of the service order bearing the approval signature of the Director and the signature of the CITY Attorney approving the service order as to form. Each authorized Service Order issued under this AGREEMENT by CITY shall be incorporated into the terms and conditions of this AGREEMENT.
- E. CITY will assign a Project Manager to facilitate each Service Order authorized under this AGREEMENT. CONSULTANT shall coordinate with

the designated Project Manager on the performance of each Service Order.

- F. CONSULTANT shall be responsible for the coordination with CITY and federal, state and local agencies that are necessary for all services authorized under this AGREEMENT.
- G. **Assignment of Personnel.** CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. The Service Order may name any specific personnel who shall be performing services. In the event that CITY, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, CONSULTANT shall, immediately upon receiving notice from CITY of such desire of CITY, reassign such person or persons.

SECTION 2. BASIC SERVICES.

- A. CONSULTANT shall provide environmental consulting services for various CITY and private development projects, as more particularly described in the authorized Service Order. The authorized Service Order may include any of the specific environmental tasks set forth below in Section 3. The authorized Service Order may also include any other environmental services described and agreed to be performed by the CONSULTANT, including, but not limited to, the following:
 - I. Input regarding environmental and land use compatibility issues during the initial evaluation of the project; and
 - II. Preparation of the appropriate program or project-level analysis and documents for each as necessary to comply with the CITY's environmental requirements, the requirements of the California Environmental Quality Act and its implementing regulations and guidelines, and/or, if necessary, the requirements of the National Environmental Policy Act and its implementing guidelines; and
 - III. Assist in public outreach efforts including public notification, coordination of the Office of Planning and Research (OPR) community meeting facilitation, and responding to public comments.

B. Service Initiation

Prepare Service Order - Upon request of CITY's Project Manager, CONSULTANT shall meet with the Project Manager to discuss the Project. CONSULTANT shall become familiar with the Project description, scope and goals and develop proposed scope of services.

CONSULTANT shall prepare a proposed scope of work for Project services consistent with CITY'S standard form of Service Order (attached hereto as **Exhibit F**). The proposed scope of services shall, at a minimum, include the following: Project Description, Scope of Services including deliverables, and Schedule of Performance and Schedule of Compensation. CONSULTANT shall submit the proposed scope of services to the Project Manager in electronic format.

~~The Project Manager will review and comment on proposed scope of work, and the parties shall agree on the terms of the final Service Order. CONSULTANT shall not be compensated for work performed in preparing a draft scope of services for a Service Order.~~

C. Service Implementation

Upon receipt of an authorized Service Order, CONSULTANT shall begin Project services described in the Service Order in accordance with the Schedule of Performance in the Service Order. For each Project, in addition to the specified services, products and deliverables detailed in the Service Order, CONSULTANT shall perform the following tasks:

Initial Meeting - Prior to beginning substantive work on a project, CONSULTANT shall meet and/or confer with CITY to establish procedures and notifications for any necessary meetings and communications with CITY staff; collect available data from the CITY and establish additional data needs and availability; confirm the format for all project products and deliverables; and address any preliminary project concerns. The meeting will be the primary opportunity to discuss the CITY'S intent, schedule and budget for the project.

The CONSULTANT shall prepare minutes of the meeting and distribute minutes to meeting participants.

Project Coordination Meetings - CONSULTANT shall attend and/or conduct project coordination meetings as required to perform authorized services and as required by Project Manager. CONSULTANT shall prepare minutes of each meeting and distribute minutes to participants.

Project Schedule - CONSULTANT shall prepare and submit a detailed schedule of performance consistent with the schedule contained in the Service Order to the Project manager for review and approval. ~~CONSULTANT shall confirm or update the schedule monthly at a minimum. Any changes to the schedule shall only be permitted with the written approval of CITY's Project Manager.~~

Project Progress Report - CONSULTANT shall submit a monthly report to the Project Manager detailing progress on the Project services.

Request for Payment / Invoice - CONSULTANT shall submit progress payment invoices to the Project Manager monthly, as specified in **Exhibit C**. The updated

Project schedule and progress report may be submitted as attachments to the invoice.

Project Record - CONSULTANT shall develop and maintain a detailed record of the chronology of the project tasks and milestones completed that are decisive, conclusive or relevant to the outcome of the Project. CONSULTANT shall submit a copy of the Project Record to the Project Manager prior to final payment for services performed on the Project. The Record shall be submitted in both paper and electronic format.

Project Documents - Aside from deliverables specified in the Service Order, and before the conclusion of the Project and final payment for services performed on the Project, CONSULTANT shall submit to the Project Manager a copy of all project documents that are decisive, conclusive or relevant to the outcome of the Project. Such documents may include, without limitation, topographical surveys and mapping, utility mapping, site inventories, base plans, reports and studies, permit applications and permits, environmental documentation, records of meetings, and communication documents. Documents shall be submitted in both paper and electronic format, as available.

SECTION 3. SPECIFIC ENVIRONMENTAL SERVICES.

- A. In addition to any other environmental services contained in the authorized Service Order, the Service Order may incorporate any of the services set forth below in this Section 3 by simply identifying the particular Task, in which case the Task is considered to have been incorporated into the authorized Service Order and CONSULTANT shall perform the Task as set forth herein.
- B. Tasks: Listed below are the Tasks which may be included in the Service Order depending on the scope of the project.

Task 1 - CEQA Documentation and Clearance

CONSULTANT shall prepare an Initial Study ("IS") and Mitigated Negative Declaration ("MND") for the Project to the satisfaction of the Director of Planning and Neighborhood Services. For purposes of this task, the CITY is assuming that a mitigated negative declaration is a sufficient and appropriate level of environmental review. If preparation of the IS leads the CONSULTANT to conclude that some other level of environmental review is needed, then CONSULTANT shall stop all work under this Service Order and consult with the CITY on how to proceed.

CONSULTANT shall prepare an Administrative Draft Initial Study/Mitigated Negative Declaration ("ADIS/MND") for the Project, in accordance with California Environmental Quality Act (CEQA) and CITY requirements. The ADIS/MND will describe in detail the Project, the regulatory setting, the existing environmental

conditions on the Project site, and assess potentially significant impacts associated with the Project. The impact analysis will apply specific thresholds for determining the significance of impacts, consistent with CEQA, and other applicable standards. The analysis will identify all potential environmental impacts of the Project, including direct, indirect, temporary, and permanent. The CONSULTANT will identify mitigation measures for the significant impacts.

The ADIS/MND will contain the following required items: 1) Project Description, 2) Environmental Setting, Impacts and Mitigation 3) Mitigation Monitoring and Reporting Program; 4) List of Preparers; 5) References; 6) Appendices; and 7) appropriate graphics.

CONSULTANT will prepare the ADIS/MND in accordance with CEQA and the CITY requirements.

CITY shall obtain names and addresses of contiguous property owners within the required distance from Project site and provide appropriate notice of the Project to such property owners.

CONSULTANT shall revise the ADIS/MND based on comments received from the CITY and prepare the Initial Study/Mitigated Negative Declaration ("IS/MND"). Upon approval of the document by the CITY, CONSULTANT shall submit black and white copies of the IS/MND to the State Clearinghouse for processing and public circulation and submit copies to the CITY for local agency distribution. CITY will provide the Notice of Completion to accompany the copies. CONSULTANT shall submit one PDF copy of the IS and each technical report formatted to the CITY's specifications.

Upon conclusion of the 30-day public review period for the IS/MND, CONSULTANT shall prepare written responses to any comments received on the IS/MND, in coordination with the CITY.

After the 30 day review period and as directed by the CITY, CONSULTANT shall prepare a Mitigation and Monitoring Reporting Program for the Project in the format determined by the CITY. The monitoring program shall identify responsibility, timing, funding, and reporting of mitigation measures identified in the DIS.

Task 2 - NEPA Documentation and Clearance

If necessary, CONSULTANT shall provide National Environmental Policy Act (NEPA) documentation in accordance with the Council on Environmental Quality (CEQ) requirements. CONSULTANT shall prepare the following analysis (in addition to CEQA); the specific requirements of such analysis shall be done in accordance with the regulations of the NEPA administering agency (e.g. Caltrans, FTA, HUD, CDBG, etc.):

- Purpose and Need

- Section 106 and 4f Evaluation for Cultural Resources and Park and Historic Resources
- Floodplain Management and Wetland Evaluation per Executive Orders 11998 and 11990
- Environmental Justice Evaluation per Executive Order 12898
- NEPA noticing, e.g. Notice of Intent (stone as Notice of Preparation for an Environmental Impact Report)
- Natural Environmental Studies as required for biology for FHWA/Caltrans projects

Task 3 - Archaeological Survey

If necessary, CONSULTANT shall prepare an Archaeological Survey Report (ASR) and Historic Properties Survey Report (HPSR) - short form. The report shall be prepared by a qualified historian and/or archaeologist. These studies will require the CONSULTANT to perform the following tasks: 1) establishment of the anticipated Area of Potential Effect (APE), 2) complete archival research, 3) field survey and inventory, and 4) findings/recommendations.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 4 -Air Quality Evaluation

If necessary, CONSULTANT shall prepare an Air Quality evaluation. It will describe the regulatory setting for air quality policy set forth by the California Air Resources Board and the Bay Area Air Quality Management District (BAAQMD). CONSULTANT shall perform the air quality evaluation in accordance with the most current State BAAQMD CEQA guidelines applicable to such evaluations. The CONSULTANT shall identify mitigations as necessary.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 5 - Traffic Study/Impact Report

If necessary, CONSULTANT shall prepare a traffic study/impact report for the Project. CONSULTANT shall conduct a transportation impact analysis (TIA) as required by the CITY to evaluate traffic and/or parking impacts of the Project. If the TIA for the proposed Project shows that the proposed Project will generate more than 100 net new peak-hour trips on a typical weekday, the CONSULTANT shall prepare a Congestion Management Program (CMP) analysis in accordance with CITY guidelines.

CONSULTANT shall submit two draft copies of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 6 - Noise Report

If necessary, CONSULTANT shall prepare a noise report that describes the regulatory setting for controlling environmental noise, as set forth by the State of California and CITY noise standards.

CONSULTANT shall calculate the operational noise level at the Project site, and evaluate the operational noise level against the most current noise standards of the CITY and/or of those most current applicable noise standards of any other regulatory agencies. If the operational noise level exceeds the CITY's or those applicable noise standards of another regulatory agency, whichever is lower, CONSULTANT shall develop noise mitigation measures to achieve compliance with the standards. CONSULTANT shall prepare and submit a report of the Noise Studies to the CITY.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 7 - Biological Assessment Report

If necessary, CONSULTANT shall prepare a report which will identify the biological resources of the Project site, and assess potential impacts from the Project on these resources, based on a Natural Environment Study (NES) in accordance with the most current CEQA requirements, if CEQA is applicable to the Project, or NEPA requirements, if NEPA is applicable to the Project, and as directed by the CITY. The report shall be prepared by a qualified biologist. The discussion in the report will include a description of the regulatory environment, including but not limited to, requirements of U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, National Marine Fisheries Service, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and California Department of Fish & Wildlife. The report will address the potentially significant impacts of the Project on biological resources.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 8 - Wetlands Delineation

If necessary, CONSULTANT shall prepare a wetlands delineation report per the most current U.S. Army Corp of Engineers requirements applicable to the preparation of such reports and as directed by the CITY.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 9 - Health Risk Assessment

If necessary, CONSULTANT shall prepare a site-specific Health Risk Assessment that will address potential human health impacts to the future users of the Project arising from the presence of the hazardous material found at the Project site. The Health Risk Assessment ("HRA") will be prepared by a toxicologist. CONSULTANT shall prepare the HRA in accordance with the most current Cal/EPA Supplemental Guidance for Human Health Multimedia Risk Assessments for Hazardous Waste Sites and Permitted Facilities (Cal/EPA 1996) regulations, and to the satisfaction of the Department of Planning and Neighborhood Services. The HRA will consider compound concentrations, transport and fate of compounds, exposure pathways, and property use. The HRA will involve the following steps:

- The selection of chemicals of concern
- Exposure assessment
- Toxicity assessment
- Risk characterization

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 10 - Phase I Environmental Site Assessment

If necessary, CONSULTANT shall perform a Phase I Environmental Site Assessment to identify potential presence of hazardous substances and soil or groundwater contamination on the site. CONSULTANT shall perform the Phase I Environmental Site Assessment per the most current American Society for Testing Materials (ASTM) guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 11 - Phase II Environmental Site Assessment

If necessary, CONSULTANT shall perform a Phase II Environmental Site Assessment on the Project site. CONSULTANT shall perform the Phase II Environmental Site Assessment per the most current ASTM guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 12 - Habitat Mitigation and Monitoring Plan (HMMP) Report

If necessary, CONSULTANT shall prepare a Habitat Mitigation and Monitoring Plan Report that identifies the mitigation measures for the Project needed to avoid those habitat impacts discussed in the GEQA document. The HMMP shall include mitigation measures as necessary, as per previous related studies and as per meetings with the CITY. The CONSULTANT shall coordinate the preparation of the Habitat Mitigation and Monitoring Plan with the CITY. The CONSULTANT shall attend a total of two (2) meetings with the CITY in this task to review changes to HMMP and coordinate the preparation of the Plan. The HMMP shall be prepared in a format as directed and approved by the CITY and in coordination with the CITY Planning and Neighborhood Services Department

The CONSULTANT shall review the content of the Mitigation and Monitoring Plan with the CITY and identify features that are expected to be required by the CITY and regulatory agencies (e.g. riparian vegetation for CDFW 1601 agreement; wetland impact minimization measures for COE Nationwide Permit; water quality protection features for RWQCB permit).

CONSULTANT shall prepare the Habitat Mitigation and Monitoring Plan in a format acceptable to the regulatory agencies and to the CITY, and shall include tables, plans, graphics and other pertinent related information. The CONSULTANT shall prepare draft Project goals and a Draft Mitigation and Monitoring Outline and submit two (2) copies to the CITY for review comments and approval.

CONSULTANT shall revise the draft goals and draft Plan outline as per CITY and other regulatory agencies review and comments. Based on the draft Plan outline and project goals, the CONSULTANT shall prepare a Draft Habitat Mitigation and Monitoring Plan and submit it to the CITY for review, comments and approval. CONSULTANT shall submit four (4) copies to the CITY. All plans and graphics shall be clear and concise. Base source maps shall be based on sources approved by the CITY. The Plan shall describe the goals of the habitat mitigation, the features of the mitigation site, a detailed implementation plan (i.e. site preparation techniques, schematic planting plan, schedule), establishment success criteria, and maintenance and monitoring activities.

CONSULTANT shall develop and include in the Habitat Mitigation and Monitoring Plan a preliminary habitat mitigation/revegetation plant list based on the expected type and size of habitat mitigation for the Project. The CONSULTANT shall submit the preliminary plant list to the CITY for review and approval. The plant list shall be a part of the Habitat Mitigation and Monitoring Plan.

The CONSULTANT shall prepare and submit to the CITY a pre-final "screencheck" of the Final Habitat Mitigation and Monitoring Plan based on comments from the CITY. The CONSULTANT shall submit two (2) copies to the CITY for review and approval. Upon review and approval by the CITY, the CONSULTANT shall prepare and submit to the CITY the Final Habitat Mitigation and Monitoring Plan. The CONSULTANT shall submit ten (10) copies, one camera ready (an original copy which can be clearly duplicated, including half tone copies of photographic graphics as directed by the CITY) copy, and one electronic copy to the CITY. The scope of services assumes that there will not be substantive changes to the mitigation site or mitigation design between the draft and screen-check final reports, such as a change in the size or location of the mitigation site(s).

Task 13 - Pre-construction Burrowing Owl Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a preconstruction survey for Burrowing Owls in accordance with the most current California Department of Fish and Wildlife (CDFW) survey protocol. The preconstruction survey shall be conducted by a qualified wildlife biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY. The CONSULTANT shall submit the results of the pre-construction survey to the CDFW for review and approval prior to site construction.

If, as a result of the survey, the CONSULTANT finds one or more active nests within the project area, the CONSULTANT shall have a qualified wildlife biologist mark the outside perimeter edge of a 250 feet buffer around each active nest with plastic fencing ("Buffer Area"). Prior to commencement of construction activities, the CONSULTANT shall have a qualified wildlife biologist inform the CITY's contractor and the contractor's workers of the presence of Burrowing Owls, their protected status, work boundaries, and measures to be implemented to avoid loss of these species during construction activities. The qualified wildlife biologist shall inform the construction workers that no construction activities are to occur within the Buffer Area until directed.

If pre-construction surveys are conducted during the non-breeding season and burrowing owls are observed on the site, the CONSULTANT shall consult with CDFW on burrowing owl eviction only after the habitat mitigation plan and mitigation agreement have been finalized between CDFW and the CITY.

Task 14 - Pre-Construction Nesting Raptor and Migratory Nesting Bird Survey.

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a pre-construction survey for nesting raptors and migratory nesting birds to determine if they occur within the project site in accordance with the most current CDFW protocol. The pre-construction survey shall be conducted by a qualified wildlife biologist. If raptors or migratory nesting birds are nesting on the site, the wildlife biologist shall recommend to the CITY a suitable buffer area between the nest site and construction activity. The wildlife biologist shall document that the young have fledged prior to construction work occurring within the buffer area. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 15 - Pre- Construction Bats Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading, demolition, or construction, whichever occurs first, the CONSULTANT shall conduct pre-construction surveys for roosting bats in accordance with the most recent California Department of Fish and Wildlife (CDFW) protocols, if buildings or trees suitable for roosting bats are present on or within 50 feet of the construction site. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that bats are roosting on or within 50 feet of the construction site, the CONSULTANT shall consult with CDFW regarding the appropriate measures to minimize impacts to the roosting bats and provide this information to the CITY. Such measures may include maintenance of a disturbance-free buffer around an active maternity roost during the breeding season (generally 1 April to 31 August, or until the young are flying, whichever occurs first). If, as a result of the survey, the CONSULTANT finds roosting bats within structures or trees that will be physically disturbed by the Project, the CONSULTANT shall have a qualified wildlife biologist evict bats from those roosts during the non-breeding season (generally, 1 September to 31 March), in accordance with CDFW protocols. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 16 - Pre-Construction California Tiger Salamander Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct preconstruction surveys for California tiger salamanders in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by qualified wildlife biologist. If the pre-construction survey determines that California tiger salamanders are present on the construction site, the CONSULTANT shall consult with CDFW and U.S. Fish and Wildlife Services (USFWS) regarding the appropriate measures to take to avoid or minimize take of individuals and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds California tiger salamanders on the Project site, the CONSULTANT shall have a qualified wildlife biologist implement any measures that have been approved by the CDFW and USFWS for that particular Project, such as relocation of individuals. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW, USFWS, and the CITY.

Task 17 - Pre-Construction Nesting Pond Turtle Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct a preconstruction survey for nesting pond turtles in accordance with the most recent CDFW protocols. The pre-construction survey shall be performed by a qualified wildlife biologist. If the CONSULTANT identifies a suitable nesting habitat, the CONSULTANT will direct the CITY on where and how to install an exclusionary fence so as to exclude turtles from entering the construction work area. The CITY will be responsible for installing the fence prior to pond-turtle breeding season. The CITY will be responsible for removing the fencing when directed by the biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 18 - Pre-Construction Nesting Woodrat Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final

survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct preconstruction surveys for nesting woodrats in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that woodrats are nesting on the construction site, the CONSULTANT shall consult with CDFW regarding the best method for relocation of the nest(s) and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds one or more nests within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the nests in accordance with CDFW protocol. CONSULTANT shall document the findings of the survey in letter format and, submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 19 - Pre-Construction Red-legged Frog Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No more than fourteen (14) calendar days prior to commencement of grading or construction, whichever occurs earlier, in the riparian habitat, the CONSULTANT shall conduct pre-construction surveys for red-legged frogs in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If CONSULTANT observes any red-legged frogs, the CONSULTANT shall consult with the US Fish and Wildlife Service (USFWS) on avoidance measures before construction work proceeds and provide the information to the CITY. If, as a result of the survey, the CONSULTANT finds red-legged frogs within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the red-legged frogs in accordance with CDFW protocol. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 20 - Archaeological Field Monitoring

If necessary, the CITY shall provide the CONSULTANT with the grading and excavation plans for the Project. CONSULTANT shall review the grading and excavation plans to determine Project impacts within potentially sensitive archaeological areas. The review shall be done by a qualified archaeologist. The archaeologist shall develop an archaeological Field Monitoring Plan that includes the frequency and duration of the monitoring based upon his/her proposed/expected construction monitoring observations. If any cultural materials are exposed or discovered during either site preparation or subsurface construction activities, the CITY will issue a separate service order for additional

archaeological work. The archaeologist shall submit a report summarizing his/her monitoring activities and findings (two hard copies and one electronic copy) to the CITY. One copy shall be provided to Director of Planning and Neighborhood Services.

Task 21 - Evaluation of Potential Mitigation Areas

If necessary, the CITY and regulatory agencies with jurisdiction over the Project and the approval of a habitat mitigation site have approved and adopted a Habitat Mitigation and Monitoring Plan for the Project. CONSULTANT shall perform the following services with regard to evaluating potential mitigation sites.

CONSULTANT shall review a proposed habitat mitigation site and assess the site for its suitability to provide environmental habitat mitigation for the Project. CONSULTANT shall review and assess the proposed habitat mitigation site in accordance with all applicable regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction over the Project and approval of the mitigation site, and as directed by the CITY. One field meeting with CITY staff shall be included in this task in order to review the potential mitigation site.

CONSULTANT shall prepare and submit a letter of findings (one hard copy and one electronic copy) that address the site's existing resources, its suitability to provide the required mitigation and the site's consistency with mitigation measures outlined in the Project's existing Habitat Mitigation and Monitoring Plan.

Task 22 - Hydraulic Study

If necessary, CONSULTANT shall prepare a Hydraulic Study for the Project in accordance with the regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction of the Project and as directed by the CITY. The report shall address, but not be limited to drainage, conveyance, water quality and Nonpoint Source (NPS) requirements.

CONSULTANT shall submit one draft of the study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft study.

Task 23 - Tree Survey

If necessary, CONSULTANT shall prepare a tree survey for the Project as directed by the CITY. The tree survey will consist of the CONSULTANT visiting the construction site one time and documenting all trees by species, diameter, and condition, in accordance with CITY's Arborist and CITY's tree survey form, which will be provided by the CITY.

CONSULTANT shall submit one draft of the survey and then a final survey (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey.

Task 24 - Greenhouse Gas (GHG) Emission

If necessary, CONSULTANT shall evaluate greenhouse gas emissions related to the proposed project. The net increase in emissions resulting from the project will be quantified using current URBEMIS software and the Bay Area Air Quality Management District's (BAAQMD) Greenhouse gas model (BGM) calculator. The project's emissions will be compared to BAAQMD's adopted greenhouse gas emissions thresholds. Measures incorporated into the project to reduce greenhouse gas emissions will be described, as appropriate.

CONSULTANT shall submit one draft of the greenhouse gas emissions study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft study.

END OF EXHIBIT A

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EXHIBIT B

SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before November 6, 2018. Work shall be initiated on an as-needed basis at the request of CITY, and work shall be prosecuted pursuant to details defined in each specific Service Order, as set forth in EXHIBIT A above.

At the sole discretion of CITY, the term of this AGREEMENT may be extended up to six months by the CITY's Director by providing written notice to CONSULTANT.

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EXHIBIT C
COMPENSATION

Section 1. Maximum Compensation for Master Agreement.

1.1 Maximum Amount: The maximum amount of compensation the CITY will pay to the CONSULTANT under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION Dollars (\$1,000,000.00). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

1.2 Manner of Payment: Each Service Order will set forth whether the CITY will pay the CONSULTANT for work performed under such Service Order on a lump sum basis or on a time and material basis. Section 2 of this Exhibit applies to each Service Order where the CITY will pay the CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where the CITY will pay the CONSULTANT on a time and material basis for the work performed.

1.3 Schedule of Charges: Exhibit C-1 of this AGREEMENT, entitled "Schedule of Charges," set forth the CONSULTANT'S charge rates for various personnel as well as the amounts it charges for various special inspections and material tests. Regardless of whether the manner of payment contained in a Service Order is on a lump sum basis or on a time and material basis, compensation shall be determined and based upon the charge rates and charge amounts set forth in the Schedule of Charges. Charge rates will be updated on an annual basis.

Section 2. Lump Sum Payment.

2.1 Lump Sum Amount: The Service Order shall specify the lump sum amount the CITY will pay the CONSULTANT for performing the required work. The lump sum amount compensates the CONSULTANT for all its costs necessary to complete the work, including professional services and reimbursable expenses. CONSULTANT shall complete all work set forth in the Service Order for the lump sum amount.

2.2 Progress Payments: The Service Order may provide for the CITY to pay the lump sum amount by making progress payments. Under such circumstances, the Service Order shall specify appropriate milestones and the amount payable upon successful completion of each milestone. Upon completion of a milestone to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the appropriate progress payment. The CITY will make the

appropriate progress payment to the CONSULTANT within thirty (30) days of the Director's approval of the CONSULTANT's invoice.

2.3 Lump-Sum Payment: If the Service Order does not provide for the CITY to make progress payments, then the CITY shall make a single, lump-sum payment to the CONSULTANT upon completion of all the work to the Director's satisfaction. Upon completion of the work to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the lump-sum amount. The CITY shall pay the lump-sum amount within thirty (30) days of the Director's approval of the CONSULTANT'S invoice.

Section 3. Payment on a Time and Materials Basis.

3.1 Maximum Compensation: The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional and special inspection services, material tests and reimbursable expenses. The CONSULTANT shall complete all work it is required to perform under the Service Order for no more than the specified maximum amount. Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

3.2 Budget: If the Service Order itemizes budget amounts for any phase or category of work, then CONSULTANT shall not exceed such itemized amount without the Director's prior written authorization. The Director may approve, in writing, transfers of budget amounts between any of the phases or categories of work listed in the Service Order, provided the aggregate total compensation does not exceed the maximum compensation.

3.3 Rates: CITY will compensate CONSULTANT at the rates set forth in Exhibit C-1 of this Master Agreement, entitled "Schedule of Charges." Wage rates subject to Prevailing Wage Requirements are subject to revision at the time of issuance of a new Determination and subsequent Determinations for the duration of the AGREEMENT consistent with the provisions of Exhibit "C-1." Rates not subject to Prevailing Wage Requirements are subject to review annually upon request of the CONSULTANT in accordance with the provisions of Exhibit "C-1." The parties must enter into a written amendment to this AGREEMENT to reflect any new rates before such rates become effective. The Director of Planning & Neighborhood Services is authorized to execute such an amendment.

3.4 Reimbursable Expenses: The CITY will reimburse for expenses subject to the following:

Each Service Order will specify the maximum amount of expenses for which the CITY will reimburse the CONSULTANT. The CITY will reimburse expenses and the costs of sub-consultants, at actual cost plus an eight percent (8%) markup, unless a lower markup is provided for in the Exhibit D-1 of this Master Agreement. Any expense the CONSULTANT incurs beyond the specified amount is at no cost to the CITY.

The following expenses are reimbursable to the extent the CONSULTANT documents to the Director's satisfaction that they were incurred in performing the work required by the Service Order: (a) the cost of mailing, shipping and/or delivery of documents or products to the CITY, (b) the cost of photographing, reproducing and/or copying, (c) the cost of the sub-consultant, provided the Director has preapproved, in writing, the use and cost of the sub-consultant, (d) telephone and fax charges, (e) the rental of any specialized equipment to the extent the Director has preapproved, in writing, the cost of such rental, and (f) any other expenses expressly identified in the service order as reimbursable. No other expenses are reimbursable unless the Director has preapproved, in writing, such expense.

3.5 Travel Time: For Service Orders on a time and materials basis, CITY will pay time for travel to and from the site when appropriate. An estimate of travel time will be included and negotiated with each service order. CITY will provide the CONSULTANT a place to store CONSULTANT's equipment at the project site, if necessary.

3.6 Invoice: Every month the CONSULTANT shall invoice the CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed, the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amounts of payments received to date under the Service Order and the balance of maximum compensation for remaining work on the Service Order.

Section 4. Others.

4.1 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.

EXHIBIT C-1

SCHEDULE OF CHARGES
(CONSULTANT Hourly Rates)

FEES

The table below identifies hourly rates for key staff identified earlier in the Organization Chart. These rates are in effect for 2013. RBF annually reviews billing rates. Any changes to billing rates in future years would be reflected in subsequent proposals to the City, if selected.

NAME	RESPONSIBILITY	HOURLY RATE
PROJECT MANAGEMENT		
Glenn Lajoie, AICP	Principal-in-Charge	\$235
Bill Wiseman, AICP	Project Director	\$215
Collette L. Morse, AICP	Quality Control Review	\$215
ENVIRONMENTAL ANALYSIS		
Alan Ashimine Starla Barker, AICP Rita Garcia Eddie Torres, INCE, REA	CEQA Project Managers	\$150-\$175
Kristen Bogue, CEI, REA Achilles Malisos	Environmental Analyst	\$95-\$140
Richard Beck, CEM, CEI, REA	Regulatory Permitting/ Hazardous Materials Analysis	\$175
TECHNICAL ANALYSIS		
Rebecca Kinney, PE	Drainage/Water Quality	\$195
Charlie Marr, PE	Water & Sewer Analysis	\$175
Tom McGill, Ph.D.	Biological Resources	\$245
Bob Matson	Transportation/Traffic/Parking	\$220
Steve Bein	GIS	\$230
SUPPORT SERVICES		
Word Processor/Graphic Artist		\$85

REIMBURSABLE COSTS

Reimbursable costs that would likely apply to the project include:

- Mileage, invoiced at 55.55 cents per mile (or as specified by the Internal Revenue Service)
- Reproduction costs for EIRs, MNDs, Initial Studies, technical studies, and plans, invoiced at cost plus 15%
- Mailing/distribution costs, invoiced at cost plus 15%
- Subconsultant fees, invoiced at cost plus 15%
- CEQA filing fees, invoiced at cost (no markup)

EXHIBIT D

INSURANCE

CONTRACTOR, at CONTRACTOR'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

Definition:

For purposes of this contract, the following definition applies: CITY of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the CITY of Milpitas, individually or collectively.

Insurance Required:

CONSULTANT must procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the contract and the results of that work by the CONSULTANT, his agents, representatives, employees or sub-consultants and provide documentation of same prior to commencement of work. The insurance must be maintained for the duration of the contract.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be at least as broad as:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability.
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (X) Professional Liability or Errors & Omissions Liability insurance appropriate to the CONSULTANT's profession.

Minimum Limits of Insurance:

CONSULTANT must maintain limits no less than:

1. **General Liability:** **\$1,000,000** per occurrence for bodily injury, personal (Including operations, injury and property damage. If Commercial General products and Liability insurance with a general aggregate limit is completed operations, used, either the general aggregate limit must apply as applicable.) separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
2. **Automobile Liability:** **\$1,000,000** per accident for bodily injury and property damage.

- | | | |
|----|--|--|
| 3. | Workers' Compensation | Statutory |
| | Employer's Liability: | \$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee |
| 4. | Professional Liability or Errors & Omissions Liability: | \$ 500,000 each occurrence
\$1,000,000 policy aggregate |

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the CITY, its officers, officials, employees and volunteers; or the CONSULTANT will provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The CITY of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the **CONSULTANT's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the CITY, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the CITY. This provision also applies to the CONSULTANT's Workers' Compensation policy.

4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the CITY. If CONSULTANT's insurer refuses to provide this endorsement, CONSULTANT shall be responsible for providing written notice to the CITY that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

Sub-Consultants:

CONSULTANTS must include all sub-CONSULTANTS as insured under its policies or furnish separate certificates and endorsements for each sub-CONSULTANT. All coverage for sub-CONSULTANTS are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the CONSULTANT allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the CONSULTANT shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONSULTANT's delay and shall not be considered to increase cost to the CITY or increase time in which the Project shall be completed.

CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect, CITY may immediately terminate this Agreement.

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EXHIBIT E

SPECIAL PROVISIONS

In the performance of this AGREEMENT:

1. Prohibition on Discrimination and Preferential Treatment

CONSULTANT shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by CITY, CONSULTANT shall file, and cause any subcontractor to file, compliance reports with the CITY. Compliance reports shall be in the form and filed at such times as may be designated by the CITY. Compliance reports shall contain such information and be supported by such data or records as may be requested by the CITY to determine whether CONSULTANT or its subcontractor is complying with the nondiscrimination and non-preference provisions of this Agreement.

3. Failure to Comply With Nondiscrimination Provisions.

If the CITY determines that the CONSULTANT has not complied with the nondiscrimination or non-preference provisions of this AGREEMENT, the CITY may terminate or suspend this AGREEMENT, in whole or in part.

4. Subcontracts.

CONSULTANT shall include provisions of this Agreement in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

5. Prevailing Wage. CONSULTANT acknowledges that portions of this contract are a Public Work, subject to the provisions of Section 1771 of the California Labor Code. CONSULTANT shall pay, or cause to be paid, prevailing wages, as set forth in the California Labor Code Section 1770

et. seq., for all labor performed on the Project sites to facilitate the professional services provided under this AGREEMENT, including, but not limited to inspection, surveying, drilling, trenching, and excavation. CONSULTANT shall include in all agreements for such labor, a requirement that the employer provide all workers with written notice that prevailing wages apply.

CONSULTANT shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages as required by the State prevailing wage law. CONSULTANT shall provide to the CITY, at no cost to the CITY, a copy of all such records within ten (10) working days of a request for such records by CITY.

CONSULTANT expressly agrees that the compensation agreed to between the parties includes all payment necessary to meet State prevailing wage law requirements. CONSULTANT shall indemnify the CITY for any claims, costs or expenses which the CITY incurs as a result of CONSULTANT'S failure to pay, or cause to be paid, prevailing wages.

6. **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. **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.

**EXHIBIT F
SERVICE ORDER**

1 CONSULTANT MASTER AGREEMENT

This Service Order is made and entered into by and between the CITY OF MILPITAS, a municipal corporation of the State of California and RBF CONSULTING, a California Corporation. CITY and CONSULTANT have entered into a Master Service Agreement dated November 6, 2013 which authorizes the proposed services and compensation as outlined below.

2 SERVICE ORDER

Service Order No: _____ Date: _____

Service Order Compensation Amount: \$ _____

CONSULTANT Firm Name: _____

Address: _____

Contact: _____

Phone/Email: _____

3 PROJECT DESCRIPTION

Project Name: _____

Brief Description of Services: _____

Exhibit A: *Attach Full Scope of Services, Schedule of Performance and Compensation*

4 APPROVALS

CONSULTANT: _____ Date: _____

Assistant CITY Attorney: _____ Date: _____

Director of Planning: _____ Date: _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated, and that funds are available as of this date of signature.

Authorized Signature: _____ Date: _____



**MASTER AGREEMENT FOR ON-CALL
ENVIRONMENTAL PLANNING CONSULTING SERVICES
BETWEEN
THE CITY OF MILPITAS
AND
LAMPHIER GREGORY**

This Master Agreement ("Agreement") is made and entered into this 6th day of November, 2013 ("Effective Date"), by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "CITY"), and LAMPHIER GREGORY, a California Corporation (hereinafter "CONSULTANT"). CITY and CONSULTANT are hereafter individually referred to as a "Party" and hereafter collectively referred to as the "Parties."

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure additional professional services regarding technical expertise in the areas of environmental planning and consulting; and

WHEREAS, CITY solicited qualification proposals from various environmental consulting firms to provide assistance on an "as-needed basis." The scope of work for said services (hereafter "SCOPE OF SERVICES ") is attached hereto as **Exhibit A** and is hereby incorporated by reference; and

WHEREAS, CONSULTANT submitted its qualifications to CITY to provide on-call environmental planning and consulting services on an as-needed basis and is one of several CONSULTANTs selected by CITY to provide services; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform such services required by this Agreement; and

WHEREAS, the purpose of this Agreement is to retain CONSULTANT CITY to perform those services specified in SECTION 1 of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, CITY and CONSULTANT hereby agree as follows:

SECTION 1. SCOPE OF SERVICES.

- A. CITY will notify CONSULTANT when it needs environmental services that it believes CONSULTANT is qualified to perform. Nothing herein obligates CITY to notify CONSULTANT about every project requiring environmental consulting services. Upon notification from CITY, CONSULTANT will prepare a Scope of

Services containing a list of the tasks to be performed and a budget associated with those tasks which, which will be attached to a Service Order as set forth in **Exhibit F**.

- B. CONSULTANT will diligently perform the tasks outlined in the agreed upon Service Order and Scope of Services attached hereto as **Exhibit A** to this Agreement.

SECTION 2. TERM OF AGREEMENT.

The term of this Agreement shall begin on the Effective Date and expire on November 6, 2018, inclusive, subject to the provisions of SECTION 11 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in **Exhibit B** entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein.

SECTION 4. COMPENSATION.

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION Dollars (\$1,000,000.00). The rate and schedule of payment is set out in **Exhibit C** entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures if any. All work is subject to CITY review and approval prior to payment.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY'S employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. 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.

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. ASSIGNABILITY.

The Parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT'S obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

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 sole 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 9. INSURANCE REQUIREMENTS.

CONSULTANT agrees to have and maintain the policies set forth in **Exhibit D** entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the CITY of Milpitas as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this Agreement, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this Agreement immediately upon written notice.
- C. CITY's Director of Planning & Neighborhood Services ("CITY's Director") is empowered to terminate this Agreement on behalf of CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this Agreement, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and CONSULTANT agree that the law governing this Agreement shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. 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.

SECTION 14. COMMUNICATION PROTOCOL.

When engaged in environmental CONSULTANT work for the CITY on private development proposals, all communication between the private developer/project applicant and the CITY shall be through CITY staff. Under no circumstances shall the environmental CONSULTANT communicate directly with the private developer/project applicant without prior authorization of CITY staff.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAIVER.

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 17. CONSULTANT'S BOOKS AND RECORDS.

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this Agreement.
- B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the CITY Attorney, CITY Auditor, CITY Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at CITY Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT'S address indicated for receipt of notices in this Agreement.

- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT'S business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in CITY Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT'S representatives, or CONSULTANT'S successor-in-interest.

SECTION 18. 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.

CONSULTANT agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

SECTION 19. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in **Exhibit D** entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 20. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: CITY of Milpitas -- Planning
Attn: Steve McHarris
455 East Calaveras Blvd.
Milpitas, CA 95035

To CONSULTANT: LAMPHIER GREGORY
Attn: Scott Gregory, President
1944 Embarcadero
Oakland, CA 94606

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 21. VENUE.

In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, Milpitas, California.

SECTION 22. PRIOR AGREEMENTS AND AMENDMENTS.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.

SECTION 23. SUBCONSULTANTS

- A. Notwithstanding Section 7 above, CONSULTANT may use subconsultant(s) in performing the following work under this AGREEMENT.
- B. CONSULTANT shall be responsible for directing the work of the subconsultant(s) and for any compensation due to subconsultant(s). CITY assumes no responsibility whatsoever concerning such compensation.
- C. CONSULTANT shall employ subconsultant(s) only with the written approval of the CITY'S Director.

SECTION 24. 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.

SECTION 25. 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.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

"CITY"

APPROVED AS TO FORM:

CITY OF MILPITAS, a municipal corporation

PLEASE SIGN & DATE

MICHAEL J. OGAZ
CITY Attorney

By _____
THOMAS WILLIAMS
CITY Manager

Date _____

LAMPHIER GREGORY
A California Corporation

Scott Gregory, President
1944 Embarcadero
Oakland, CA 94606

By  10/17/13

Print Name: SCOTT GREGORY

Title: PRESIDENT

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EXHIBIT A

SCOPE OF SERVICES

CONSULTANT shall provide to the CITY's Department of Planning and Neighborhood Services on-call environmental consulting services for various CITY initiated and/or private development projects, on an as needed basis. CONSULTANT'S services shall be provided as requested by the CITY's Planning Director on an as needed basis, as set forth in a specific project Service Order in the form attached as Exhibit F to this Agreement.

SECTION 1. GENERAL PROVISIONS

- A. CONSULTANT shall perform all services to the satisfaction of the CITY'S Planning Director.
- B. All of the services furnished by the CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among environmental CONSULTANT professionals of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.
- C. All work performed under this AGREEMENT shall be authorized by a specific Service Order. Each Service Order given by CITY shall detail the nature of the specific services to be performed by the CONSULTANT, the time limit within which such services must be completed and the compensation for such services. Such details shall include a description of the project for which CONSULTANT shall perform the services, the geographic limits of the project, the type and scope of services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. CONSULTANT shall not perform any services unless authorized by a fully executed Service Order. Any unauthorized services performed by CONSULTANT shall be at no cost to the CITY.
- D. CONSULTANT shall begin work under the service order only after receipt of the service order bearing the approval signature of the Director and the signature of the CITY Attorney approving the service order as to form. Each authorized Service Order issued under this AGREEMENT by CITY shall be incorporated into the terms and conditions of this AGREEMENT.
- E. CITY will assign a Project Manager to facilitate each Service Order authorized under this AGREEMENT. CONSULTANT shall coordinate with

the designated Project Manager on the performance of each Service Order.

- F. CONSULTANT shall be responsible for the coordination with CITY and federal, state and local agencies that are necessary for all services authorized under this AGREEMENT.
- G. **Assignment of Personnel.** CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. The Service Order may name any specific personnel who shall be performing services. In the event that CITY, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, CONSULTANT shall, immediately upon receiving notice from CITY of such desire of CITY, reassign such person or persons.

SECTION 2. BASIC SERVICES.

- A. CONSULTANT shall provide environmental consulting services for various CITY and private development projects, as more particularly described in the authorized Service Order. The authorized Service Order may include any of the specific environmental tasks set forth below in Section 3. The authorized Service Order may also include any other environmental services described and agreed to be performed by the CONSULTANT, including, but not limited to, the following:
 - I. Input regarding environmental and land use compatibility issues during the initial evaluation of the project; and
 - II. Preparation of the appropriate program or project-level analysis and documents for each as necessary to comply with the CITY's environmental requirements, the requirements of the California Environmental Quality Act and its implementing regulations and guidelines, and/or, if necessary, the requirements of the National Environmental Policy Act and its implementing guidelines; and
 - III. Assist in public outreach efforts including public notification, coordination of the Office of Planning and Research (OPR) community meeting facilitation, and responding to public comments.

B. Service Initiation

Prepare Service Order - Upon request of CITY's Project Manager, CONSULTANT shall meet with the Project Manager to discuss the Project. CONSULTANT shall become familiar with the Project description, scope and goals and develop proposed scope of services.

CONSULTANT shall prepare a proposed scope of work for Project services consistent with CITY'S standard form of Service Order (attached hereto as **Exhibit F**). The proposed scope of services shall, at a minimum, include the following: Project Description, Scope of Services including deliverables, and Schedule of Performance and Schedule of Compensation. CONSULTANT shall submit the proposed scope of services to the Project Manager in electronic format.

The Project Manager will review and comment on proposed scope of work, and the parties shall agree on the terms of the final Service Order. CONSULTANT shall not be compensated for work performed in preparing a draft scope of services for a Service Order.

C. Service Implementation

Upon receipt of an authorized Service Order, CONSULTANT shall begin Project services described in the Service Order in accordance with the Schedule of Performance in the Service Order. For each Project, in addition to the specified services, products and deliverables detailed in the Service Order, CONSULTANT shall perform the following tasks:

Initial Meeting - Prior to beginning substantive work on a project, CONSULTANT shall meet and/or confer with CITY to establish procedures and notifications for any necessary meetings and communications with CITY staff; collect available data from the CITY and establish additional data needs and availability; confirm the format for all project products and deliverables; and address any preliminary project concerns. The meeting will be the primary opportunity to discuss the CITY'S intent, schedule and budget for the project.

The CONSULTANT shall prepare minutes of the meeting and distribute minutes to meeting participants.

Project Coordination Meetings - CONSULTANT shall attend and/or conduct project coordination meetings as required to perform authorized services and as required by Project Manager. CONSULTANT shall prepare minutes of each meeting and distribute minutes to participants.

Project Schedule - CONSULTANT shall prepare and submit a detailed schedule of performance consistent with the schedule contained in the Service Order to the Project manager for review and approval. CONSULTANT shall confirm or update the schedule monthly at a minimum. Any changes to the schedule shall only be permitted with the written approval of CITY'S Project Manager.

Project Progress Report - CONSULTANT shall submit a monthly report to the Project Manager detailing progress on the Project services.

Request for Payment / Invoice - CONSULTANT shall submit progress payment invoices to the Project Manager monthly, as specified in **Exhibit C**. The updated Project schedule and progress report may be submitted as attachments to the invoice.

Project Record - CONSULTANT shall develop and maintain a detailed record of the chronology of the project tasks and milestones completed that are decisive, conclusive or relevant to the outcome of the Project. CONSULTANT shall submit a copy of the Project Record to the Project Manager prior to final payment for services performed on the Project. The Record shall be submitted in both paper and electronic format.

Project Documents - Aside from deliverables specified in the Service Order, and before the conclusion of the Project and final payment for services performed on the Project, CONSULTANT shall submit to the Project Manager a copy of all project documents that are decisive, conclusive or relevant to the outcome of the Project. Such documents may include, without limitation, topographical surveys and mapping, utility mapping, site inventories, base plans, reports and studies, permit applications and permits, environmental documentation, records of meetings, and communication documents. Documents shall be submitted in both paper and electronic format, as available.

SECTION 3. SPECIFIC ENVIRONMENTAL SERVICES.

- A. In addition to any other environmental services contained in the authorized Service Order, the Service Order may incorporate any of the services set forth below in this Section 3 by simply identifying the particular Task, in which case the Task is considered to have been incorporated into the authorized Service Order and CONSULTANT shall perform the Task as set forth herein.
- B. Tasks: Listed below are the Tasks which may be included in the Service Order depending on the scope of the project.

Task 1 - CEQA Documentation and Clearance

CONSULTANT shall prepare an Initial Study ("IS") and Mitigated Negative Declaration ("MND") for the Project to the satisfaction of the Director of Planning and Neighborhood Services. For purposes of this task, the CITY is assuming that a mitigated negative declaration is a sufficient and appropriate level of environmental review. If preparation of the IS leads the CONSULTANT to conclude that some other level of environmental review is needed, then CONSULTANT shall stop all work under this Service Order and consult with the CITY on how to proceed.

CONSULTANT shall prepare an Administrative Draft Initial Study/Mitigated Negative Declaration ("ADIS/MND") for the Project, in accordance with California Environmental Quality Act (CEQA) and CITY requirements. The ADIS/MND will describe in detail the Project, the regulatory setting, the existing environmental conditions on the Project site, and assess potentially significant impacts associated with the Project. The impact analysis will apply specific thresholds for determining the significance of impacts, consistent with CEQA, and other applicable standards. The analysis will identify all potential environmental impacts of the Project, including direct, indirect, temporary, and permanent. The CONSULTANT will identify mitigation measures for the significant impacts.

The ADIS/MND will contain the following required items: 1) Project Description, 2) Environmental Setting, Impacts and Mitigation 3) Mitigation Monitoring and Reporting Program; 4) List of Preparers; 5) References; 6) Appendices; and 7) appropriate graphics.

CONSULTANT will prepare the ADIS/MND in accordance with CEQA and the CITY requirements.

CITY shall obtain names and addresses of contiguous property owners within the required distance from Project site and provide appropriate notice of the Project to such property owners.

CONSULTANT shall revise the ADIS/MND based on comments received from the CITY and prepare the Initial Study/Mitigated Negative Declaration ("IS/MND"). Upon approval of the document by the CITY, CONSULTANT shall submit black and white copies of the IS/MND to the State Clearinghouse for processing and public circulation and submit copies to the CITY for local agency distribution. CITY will provide the Notice of Completion to accompany the copies. CONSULTANT shall submit one PDF copy of the IS and each technical report formatted to the CITY's specifications.

Upon conclusion of the 30-day public review period for the IS/MND, CONSULTANT shall prepare written responses to any comments received on the IS/MND, in coordination with the CITY.

After the 30 day review period and as directed by the CITY, CONSULTANT shall prepare a Mitigation and Monitoring Reporting Program for the Project in the format determined by the CITY. The monitoring program shall identify responsibility, timing, funding, and reporting of mitigation measures identified in the DIS.

Task 2 - NEPA Documentation and Clearance

If necessary, CONSULTANT shall provide National Environmental Policy Act (NEPA) documentation in accordance with the Council on Environmental Quality (CEQ) requirements. CONSULTANT shall prepare the following analysis (in addition to CEQA); the specific requirements of such analysis shall be done in accordance with the regulations of the NEPA administering agency (e.g. Caltrans, FTA, HUD, CDBG, etc.):

- Purpose and Need
- Section 106 and 4f Evaluation for Cultural Resources and Park and Historic Resources
- Floodplain Management and Wetland Evaluation per Executive Orders 11998 and 11990
- Environmental Justice Evaluation per Executive Order 12898
- NEPA noticing, e.g. Notice of Intent (stone as Notice of Preparation for an Environmental Impact Report)
- Natural Environmental Studies as required for biology for FHWA/Caltrans projects

Task 3 - Archaeological Survey

If necessary, CONSULTANT shall prepare an Archaeological Survey Report (ASR) and Historic Properties Survey Report (HPSR) - short form. The report shall be prepared by a qualified historian and/or archaeologist. These studies will require the CONSULTANT to perform the following tasks: 1) establishment of the anticipated Area of Potential Effect (APE), 2) complete archival research, 3) field survey and inventory, and 4) findings/recommendations.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 4 -Air Quality Evaluation

If necessary, CONSULTANT shall prepare an Air Quality evaluation. It will describe the regulatory setting for air quality policy set forth by the California Air Resources Board and the Bay Area Air Quality Management District (BAAQMD). CONSULTANT shall perform the air quality evaluation in accordance with the most current State BAAQMD CEQA guidelines applicable to such evaluations. The CONSULTANT shall identify mitigations as necessary.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 5 - Traffic Study/Impact Report

If necessary, CONSULTANT shall prepare a traffic study/impact report for the Project. CONSULTANT shall conduct a transportation impact analysis (TIA) as required by the CITY to evaluate traffic and/or parking impacts of the Project. If the TIA for the proposed Project shows that the proposed Project will generate more than 100 net new peak-hour trips on a typical weekday, the CONSULTANT shall prepare a Congestion Management Program (CMP) analysis in accordance with CITY guidelines.

CONSULTANT shall submit two draft copies of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 6 - Noise Report

If necessary, CONSULTANT shall prepare a noise report that describes the regulatory setting for controlling environmental noise, as set forth by the State of California and CITY noise standards.

CONSULTANT shall calculate the operational noise level at the Project site, and evaluate the operational noise level against the most current noise standards of the CITY and/or of those most current applicable noise standards of any other regulatory agencies. If the operational noise level exceeds the CITY's or those applicable noise standards of another regulatory agency, whichever is lower, CONSULTANT shall develop noise mitigation measures to achieve compliance with the standards. CONSULTANT shall prepare and submit a report of the Noise Studies to the CITY.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 7 - Biological Assessment Report

If necessary, CONSULTANT shall prepare a report which will identify the biological resources of the Project site, and assess potential impacts from the Project on these resources, based on a Natural Environment Study (NES) in accordance with the most current CEQA requirements, if CEQA is applicable to the Project, or NEPA requirements, if NEPA is applicable to the Project, and as directed by the CITY. The report shall be prepared by a qualified biologist. The discussion in the report will include a description of the regulatory environment, including but not limited to, requirements of U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, National Marine Fisheries Service, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and California Department of Fish & Wildlife. The report will address the potentially significant impacts of the Project on biological resources.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 8 - Wetlands Delineation

If necessary, CONSULTANT shall prepare a wetlands delineation report per the most current U.S. Army Corp of Engineers requirements applicable to the preparation of such reports and as directed by the CITY.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 9 - Health Risk Assessment

If necessary, CONSULTANT shall prepare a site-specific Health Risk Assessment that will address potential human health impacts to the future users of the Project arising from the presence of the hazardous material found at the Project site. The Health Risk Assessment ("HRA") will be prepared by a toxicologist. CONSULTANT shall prepare the HRA in accordance with the most current Cal/EPA Supplemental Guidance for Human Health Multimedia Risk Assessments for Hazardous Waste Sites and Permitted Facilities (Cal/EPA 1996) regulations, and to the satisfaction of the Department of Planning and Neighborhood Services. The HRA will consider compound concentrations, transport and fate of compounds, exposure pathways, and property use. The HRA will involve the following steps:

- The selection of chemicals of concern
- Exposure assessment
- Toxicity assessment
- Risk characterization

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 10 - Phase I Environmental Site Assessment

If necessary, CONSULTANT shall perform a Phase I Environmental Site Assessment to identify potential presence of hazardous substances and soil or groundwater contamination on the site. CONSULTANT shall perform the Phase I Environmental Site Assessment per the most current American Society for Testing Materials (ASTM) guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 11 - Phase II Environmental Site Assessment

If necessary, CONSULTANT shall perform a Phase II Environmental Site Assessment on the Project site. CONSULTANT shall perform the Phase II Environmental Site Assessment per the most current ASTM guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 12 - Habitat Mitigation and Monitoring Plan (HMMP) Report

If necessary, CONSULTANT shall prepare a Habitat Mitigation and Monitoring Plan Report that identifies the mitigation measures for the Project needed to avoid those habitat impacts discussed in the CEQA document. The HMMP shall include mitigation measures as necessary, as per previous related studies and as per meetings with the CITY. The CONSULTANT shall coordinate the preparation of the Habitat Mitigation and Monitoring Plan with the CITY. The CONSULTANT shall attend a total of two (2) meetings with the CITY in this task to review changes to HMMP and coordinate the preparation of the Plan. The HMMP shall be prepared in a format as directed and approved by the CITY and in coordination with the CITY Planning and Neighborhood Services Department

The CONSULTANT shall review the content of the Mitigation and Monitoring Plan with the CITY and identify features that are expected to be required by the CITY and regulatory agencies (e.g. riparian vegetation for CDFW 1601 agreement; wetland impact minimization measures for COE Nationwide Permit; water quality protection features for RWQCB permit).

CONSULTANT shall prepare the Habitat Mitigation and Monitoring Plan in a format acceptable to the regulatory agencies and to the CITY, and shall include tables, plans, graphics and other pertinent related information. The CONSULTANT shall prepare draft Project goals and a Draft Mitigation and Monitoring Outline and submit two (2) copies to the CITY for review comments and approval.

CONSULTANT shall revise the draft goals and draft Plan outline as per CITY and other regulatory agencies review and comments. Based on the draft Plan outline and project goals, the CONSULTANT shall prepare a Draft Habitat Mitigation and Monitoring Plan and submit it to the CITY for review, comments and approval. CONSULTANT shall submit four (4) copies to the CITY. All plans and graphics shall be clear and concise. Base source maps shall be based on sources

approved by the CITY. The Plan shall describe the goals of the habitat mitigation, the features of the mitigation site, a detailed implementation plan (i.e. site preparation techniques, schematic planting plan, schedule), establishment success criteria, and maintenance and monitoring activities.

CONSULTANT shall develop and include in the Habitat Mitigation and Monitoring Plan a preliminary habitat mitigation/revegetation plant list based on the expected type and size of habitat mitigation for the Project. The CONSULTANT shall submit the preliminary plant list to the CITY for review and approval. The plant list shall be a part of the Habitat Mitigation and Monitoring Plan.

The CONSULTANT shall prepare and submit to the CITY a pre-final "screencheck" of the Final Habitat Mitigation and Monitoring Plan based on comments from the CITY. The CONSULTANT shall submit two (2) copies to the CITY for review and approval. Upon review and approval by the CITY, the CONSULTANT shall prepare and submit to the CITY the Final Habitat Mitigation and Monitoring Plan. The CONSULTANT shall submit ten (10) copies, one camera ready (an original copy which can be clearly duplicated, including half tone copies of photographic graphics as directed by the CITY) copy, and one electronic copy to the CITY. The scope of services assumes that there will not be substantive changes to the mitigation site or mitigation design between the draft and screen-check final reports, such as a change in the size or location of the mitigation site(s).

Task 13 - Pre-construction Burrowing Owl Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a preconstruction survey for Burrowing Owls in accordance with the most current California Department of Fish and Wildlife (CDFW) survey protocol. The preconstruction survey shall be conducted by a qualified wildlife biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY. The CONSULTANT shall submit the results of the pre-construction survey to the CDFW for review and approval prior to site construction.

If, as a result of the survey, the CONSULTANT finds one or more active nests within the project area, the CONSULTANT shall have a qualified wildlife biologist mark the outside perimeter edge of a 250 foot buffer around each active nest with plastic fencing ("Buffer Area"). Prior to commencement of construction activities, the CONSULTANT shall have a qualified wildlife biologist inform the CITY's contractor and the contractor's workers of the presence of Burrowing

Owls, their protected status, work boundaries, and measures to be implemented to avoid loss of these species during construction activities. The qualified wildlife biologist shall inform the construction workers that no construction activities are to occur within the Buffer Area until directed.

If pre-construction surveys are conducted during the non-breeding season and burrowing owls are observed on the site, the CONSULTANT shall consult with CDFW on burrowing owl eviction only after the habitat mitigation plan and mitigation agreement have been finalized between CDFW and the CITY.

Task 14 - Pre-Construction Nesting Raptor and Migratory Nesting Bird Survey.

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a pre-construction survey for nesting raptors and migratory nesting birds to determine if they occur within the project site in accordance with the most current CDFW protocol. The pre-construction survey shall be conducted by a qualified wildlife biologist. If raptors or migratory nesting birds are nesting on the site, the wildlife biologist shall recommend to the CITY a suitable buffer area between the nest site and construction activity. The wildlife biologist shall document that the young have fledged prior to construction work occurring within the buffer area. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 15 - Pre- Construction Bats Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading, demolition, or construction, whichever occurs first, the CONSULTANT shall conduct pre-construction surveys for roosting bats in accordance with the most recent California Department of Fish and Wildlife (CDFW) protocols, if buildings or trees suitable for roosting bats are present on or within 50 feet of the construction site. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that bats are roosting on or within 50 feet of the construction site, the CONSULTANT shall consult with CDFW regarding the appropriate measures to minimize impacts to the roosting bats and provide this information to the CITY. Such measures may include

maintenance of a disturbance-free buffer around an active maternity roost during the breeding season (generally 1 April to 31 August, or until the young are flying, whichever occurs first). If, as a result of the survey, the CONSULTANT finds roosting bats within structures or trees that will be physically disturbed by the Project, the CONSULTANT shall have a qualified wildlife biologist evict bats from those roosts during the non-breeding season (generally, 1 September to 31 March), in accordance with CDFW protocols. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 16 - Pre-Construction California Tiger Salamander Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct preconstruction surveys for California tiger salamanders in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by qualified wildlife biologist. If the pre-construction survey determines that California tiger salamanders are present on the construction site, the CONSULTANT shall consult with CDFW and U.S. Fish and Wildlife Services (USFWS) regarding the appropriate measures to take to avoid or minimize take of individuals and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds California tiger salamanders on the Project site, the CONSULTANT shall have a qualified wildlife biologist implement any measures that have been approved by the CDFW and USFWS for that particular Project, such as relocation of individuals. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW, USFWS, and the CITY.

Task 17 - Pre-Construction Nesting Pond Turtle Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct a preconstruction survey for nesting pond turtles in accordance with the most recent CDFW protocols. The pre-construction survey shall be performed by a qualified wildlife biologist. If the CONSULTANT identifies a suitable nesting habitat, the CONSULTANT will direct the CITY on where and how to install an

exclusionary fence so as to exclude turtles from entering the construction work area. The CITY will be responsible for installing the fence prior to pond-turtle breeding season. The CITY will be responsible for removing the fencing when directed by the biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 18 - Pre-Construction Nesting Woodrat Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct preconstruction surveys for nesting woodrats in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that woodrats are nesting on the construction site, the CONSULTANT shall consult with CDFW regarding the best method for relocation of the nest(s) and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds one or more nests within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the nests in accordance with CDFW protocol. CONSULTANT shall document the findings of the survey in letter format and, submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 19 - Pre-Construction Red-legged Frog Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No more than fourteen (14) calendar days prior to commencement of grading or construction, whichever occurs earlier, in the riparian habitat, the CONSULTANT shall conduct pre-construction surveys for red-legged frogs in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If CONSULTANT observes any red-legged frogs, the CONSULTANT shall consult with the US Fish and Wildlife Service (USFWS) on avoidance measures before construction work proceeds and provide the information to the CITY. If, as a result of the survey, the CONSULTANT finds red-legged frogs within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the red-legged frogs in accordance with CDFW protocol. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 20 - Archaeological Field Monitoring

If necessary, the CITY shall provide the CONSULTANT with the grading and excavation plans for the Project. CONSULTANT shall review the grading and excavation plans to determine Project impacts within potentially sensitive archaeological areas. The review shall be done by a qualified archaeologist. The archaeologist shall develop an archaeological Field Monitoring Plan that includes the frequency and duration of the monitoring based upon his/her proposed/expected construction monitoring observations. If any cultural materials are exposed or discovered during either site preparation or subsurface construction activities, the CITY will issue a separate service order for additional archaeological work. The archaeologist shall submit a report summarizing his/her monitoring activities and findings (two hard copies and one electronic copy) to the CITY. One copy shall be provided to Director of Planning and Neighborhood Services.

Task 21 - Evaluation of Potential Mitigation Areas

If necessary, the CITY and regulatory agencies with jurisdiction over the Project and the approval of a habitat mitigation site have approved and adopted a Habitat Mitigation and Monitoring Plan for the Project. CONSULTANT shall perform the following services with regard to evaluating potential mitigation sites.

CONSULTANT shall review a proposed habitat mitigation site and assess the site for its suitability to provide environmental habitat mitigation for the Project. CONSULTANT shall review and assess the proposed habitat mitigation site in accordance with all applicable regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction over the Project and approval of the mitigation site, and as directed by the CITY. One field meeting with CITY staff shall be included in this task in order to review the potential mitigation site.

CONSULTANT shall prepare and submit a letter of findings (one hard copy and one electronic copy) that address the site's existing resources, its suitability to provide the required mitigation and the site's consistency with mitigation measures outlined in the Project's existing Habitat Mitigation and Monitoring Plan.

Task 22 - Hydraulic Study

If necessary, CONSULTANT shall prepare a Hydraulic Study for the Project in accordance with the regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction of the Project and as directed by the CITY. The report shall address, but not be limited to drainage, conveyance, water quality and Nonpoint Source (NPS) requirements.

CONSULTANT shall submit one draft of the study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft study.

Task 23 - Tree Survey

If necessary, CONSULTANT shall prepare a tree survey for the Project as directed by the CITY. The tree survey will consist of the CONSULTANT visiting the construction site one time and documenting all trees by species, diameter, and condition, in accordance with CITY's Arborist and CITY's tree survey form, which will be provided by the CITY.

CONSULTANT shall submit one draft of the survey and then a final survey (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey.

Task 24 - Greenhouse Gas (GHG) Emission

If necessary, CONSULTANT shall evaluate greenhouse gas emissions related to the proposed project. The net increase in emissions resulting from the project will be quantified using current URBEMIS software and the Bay Area Air Quality Management District's (BAAQMD) Greenhouse gas model (BGM) calculator. The project's emissions will be compared to BAAQMD's adopted greenhouse gas emissions thresholds. Measures incorporated into the project to reduce greenhouse gas emissions will be described, as appropriate.

CONSULTANT shall submit one draft of the greenhouse gas emissions study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft study.

END OF EXHIBIT A

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EXHIBIT B

SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before November 6, 2018. Work shall be initiated on an as-needed basis at the request of CITY, and work shall be prosecuted pursuant to details defined in each specific Service Order, as set forth in EXHIBIT A above.

At the sole discretion of CITY, the term of this AGREEMENT may be extended up to six months by the CITY's Director by providing written notice to CONSULTANT.

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EXHIBIT C
COMPENSATION

Section 1. Maximum Compensation for Master Agreement.

1.1 Maximum Amount: The maximum amount of compensation the CITY will pay to the CONSULTANT under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION Dollars (\$1,000,000.00). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

1.2 Manner of Payment: Each Service Order will set forth whether the CITY will pay the CONSULTANT for work performed under such Service Order on a lump sum basis or on a time and material basis. Section 2 of this Exhibit applies to each Service Order where the CITY will pay the CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where the CITY will pay the CONSULTANT on a time and material basis for the work performed.

1.3 Schedule of Charges: Exhibit C-1 of this AGREEMENT, entitled "Schedule of Charges," set forth the CONSULTANT'S charge rates for various personnel as well as the amounts it charges for various special inspections and material tests. Regardless of whether the manner of payment contained in a Service Order is on a lump sum basis or on a time and material basis, compensation shall be determined and based upon the charge rates and charge amounts set forth in the Schedule of Charges. Charge rates will be updated on an annual basis.

Section 2. Lump Sum Payment.

2.1 Lump Sum Amount: The Service Order shall specify the lump sum amount the CITY will pay the CONSULTANT for performing the required work. The lump sum amount compensates the CONSULTANT for all its costs necessary to complete the work, including professional services and reimbursable expenses. CONSULTANT shall complete all work set forth in the Service Order for the lump sum amount.

2.2 Progress Payments: The Service Order may provide for the CITY to pay the lump sum amount by making progress payments. Under such circumstances, the Service Order shall specify appropriate milestones and the amount payable upon successful completion of each milestone. Upon completion of a milestone to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the appropriate progress payment. The CITY will make the

appropriate progress payment to the CONSULTANT within thirty (30) days of the Director's approval of the CONSULTANT's invoice.

2.3 Lump-Sum Payment: If the Service Order does not provide for the CITY to make progress payments, then the CITY shall make a single, lump-sum payment to the CONSULTANT upon completion of all the work to the Director's satisfaction. Upon completion of the work to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the lump-sum amount. The CITY shall pay the lump-sum amount within thirty (30) days of the Director's approval of the CONSULTANT'S invoice.

Section 3. Payment on a Time and Materials Basis.

3.1 Maximum Compensation: The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional and special inspection services, material tests and reimbursable expenses. The CONSULTANT shall complete all work it is required to perform under the Service Order for no more than the specified maximum amount. Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

3.2 Budget: If the Service Order itemizes budget amounts for any phase or category of work, then CONSULTANT shall not exceed such itemized amount without the Director's prior written authorization. The Director may approve, in writing, transfers of budget amounts between any of the phases or categories of work listed in the Service Order, provided the aggregate total compensation does not exceed the maximum compensation.

3.3 Rates: CITY will compensate CONSULTANT at the rates set forth in Exhibit C-1 of this Master Agreement, entitled "Schedule of Charges." Wage rates subject to Prevailing Wage Requirements are subject to revision at the time of issuance of a new Determination and subsequent Determinations for the duration of the AGREEMENT consistent with the provisions of Exhibit "C-1." Rates not subject to Prevailing Wage Requirements are subject to review annually upon request of the CONSULTANT in accordance with the provisions of Exhibit "C-1." The parties must enter into a written amendment to this AGREEMENT to reflect any new rates before such rates become effective. The Director of Planning & Neighborhood Services is authorized to execute such an amendment.

3.4 Reimbursable Expenses: The CITY will reimburse for expenses subject to the following:

Each Service Order will specify the maximum amount of expenses for which the CITY will reimburse the CONSULTANT. The CITY will reimburse expenses and the costs of sub-consultants, at actual cost plus an eight percent (8%) markup, unless a lower markup is provided for in the Exhibit D-1 of this Master

Agreement. Any expense the CONSULTANT incurs beyond the specified amount is at no cost to the CITY.

The following expenses are reimbursable to the extent the CONSULTANT documents to the Director's satisfaction that they were incurred in performing the work required by the Service Order: (a) the cost of mailing, shipping and/or delivery of documents or products to the CITY, (b) the cost of photographing, reproducing and/or copying, (c) the cost of the sub-consultant, provided the Director has preapproved, in writing, the use and cost of the sub-consultant, (d) telephone and fax charges, (e) the rental of any specialized equipment to the extent the Director has preapproved, in writing, the cost of such rental, and (f) any other expenses expressly identified in the service order as reimbursable. No other expenses are reimbursable unless the Director has preapproved, in writing, such expense.

3.5 Travel Time: For Service Orders on a time and materials basis, CITY will pay time for travel to and from the site when appropriate. An estimate of travel time will be included and negotiated with each service order. CITY will provide the CONSULTANT a place to store CONSULTANT's equipment at the project site, if necessary.

3.6 Invoice: Every month the CONSULTANT shall invoice the CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed, the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amounts of payments received to date under the Service Order and the balance of maximum compensation for remaining work on the Service Order.

Section 4. Others.

4.1 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.

EXHIBIT C-1

SCHEDULE OF CHARGES
(CONSULTANT Hourly Rates)

2013 HOURLY RATE SCHEDULE

Scott Gregory, President	\$215/hour
Senior Planner	\$170/hour
Associate Planner	\$160/hour
Planner	\$130/hour
Administrative Support Staff	\$85/hour

COST AND PAYMENT SCHEDULE:

Rates provided are valid through the end of 2013. New rates, based on reasonable cost-of-living increases may apply in January 2014 and annually thereafter.

EXHIBIT D

INSURANCE

CONTRACTOR, at CONTRACTOR'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

Definition:

For purposes of this contract, the following definition applies: CITY of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the CITY of Milpitas, individually or collectively.

Insurance Required:

CONSULTANT must procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the contract and the results of that work by the CONSULTANT, his agents, representatives, employees or sub-consultants and provide documentation of same prior to commencement of work. The insurance must be maintained for the duration of the contract.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be at least as broad as:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability.
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (X) Professional Liability or Errors & Omissions Liability insurance appropriate to the CONSULTANT's profession.

Minimum Limits of Insurance:

CONSULTANT must maintain limits no less than:

1. **General Liability:** **\$1,000,000** per occurrence for bodily injury, personal (Including operations, injury and property damage. If Commercial General products and Liability insurance with a general aggregate limit is completed operations, as applicable.) used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
2. **Automobile** **\$1,000,000** per accident for bodily injury and property

- | | |
|---|-----------------------------------|
| Liability: | damage. |
| 3. Workers' Compensation: | Statutory |
| Employer's Liability: | \$1,000,000 each accident |
| | \$1,000,000 disease-policy limit |
| | \$1,000,000 disease-each employee |
| 4. Professional Liability or Errors & Omissions Liability: | \$ 500,000 each occurrence |
| | \$1,000,000 policy aggregate |

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the CITY, its officers, officials, employees and volunteers; or the CONSULTANT will provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The CITY of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the **CONSULTANT's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the CITY, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the CITY. This provision also applies to the CONSULTANT's Workers' Compensation policy.

4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the CITY. If CONSULTANT's insurer refuses to provide this endorsement, CONSULTANT shall be responsible for providing written notice to the CITY that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

Sub-Consultants:

CONSULTANTS must include all sub-CONSULTANTS as insured under its policies or furnish separate certificates and endorsements for each sub-CONSULTANT. All coverage for sub-CONSULTANTS are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the CONSULTANT allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the CONSULTANT shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONSULTANT's delay and shall not be considered to increase cost to the CITY or increase time in which the Project shall be completed.

CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect, CITY may immediately terminate this Agreement.

EXHIBIT E

SPECIAL PROVISIONS

In the performance of this AGREEMENT:

1. Prohibition on Discrimination and Preferential Treatment

CONSULTANT shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by CITY, CONSULTANT shall file, and cause any subcontractor to file, compliance reports with the CITY. Compliance reports shall be in the form and filed at such times as may be designated by the CITY. Compliance reports shall contain such information and be supported by such data or records as may be requested by the CITY to determine whether CONSULTANT or its subcontractor is complying with the nondiscrimination and non-preference provisions of this Agreement.

3. Failure to Comply With Nondiscrimination Provisions.

If the CITY determines that the CONSULTANT has not complied with the nondiscrimination or non-preference provisions of this AGREEMENT, the CITY may terminate or suspend this AGREEMENT, in whole or in part.

4. Subcontracts.

CONSULTANT shall include provisions of this Agreement in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

5. **Prevailing Wage.** CONSULTANT acknowledges that portions of this contract are a Public Work, subject to the provisions of Section 1771 of the California Labor Code. CONSULTANT shall pay, or cause to be paid, prevailing wages, as set forth in the California Labor Code Section 1770 *et. seq.*, for all labor performed on the Project sites to facilitate the professional services provided under this AGREEMENT, including, but not limited to inspection, surveying, drilling, trenching, and excavation. CONSULTANT shall include in all agreements for such labor, a requirement that the employer provide all workers with written notice that prevailing wages apply.

CONSULTANT shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages as required by the State prevailing wage law. CONSULTANT shall provide to the CITY, at no cost to the CITY, a copy of all such records within ten (10) working days of a request for such records by CITY.

CONSULTANT expressly agrees that the compensation agreed to between the parties includes all payment necessary to meet State prevailing wage law requirements. CONSULTANT shall indemnify the CITY for any claims, costs or expenses which the CITY incurs as a result of CONSULTANT'S failure to pay, or cause to be paid, prevailing wages.

6. **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. **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.

EXHIBIT F
SERVICE ORDER

1 CONSULTANT MASTER AGREEMENT

This Service Order is made and entered into by and between the CITY OF MILPITAS, a municipal corporation of the State of California and LAMPHIER GREGORY, a California Corporation. CITY and CONSULTANT have entered into a Master Service Agreement dated November 6, 2013 which authorizes the proposed services and compensation as outlined below.

2 SERVICE ORDER

Service Order No: _____ Date: _____

Service Order Compensation Amount: \$ _____

CONSULTANT Firm Name: _____

Address: _____

Contact: _____

Phone/Email: _____

3 PROJECT DESCRIPTION

Project Name: _____

Brief Description of Services: _____

Exhibit A: *Attach Full Scope of Services, Schedule of Performance and Compensation*

4 APPROVALS

CONSULTANT: _____ Date: _____

Assistant CITY Attorney: _____ Date: _____

Director of Planning: _____ Date: _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated, and that funds are available as of this date of signature.

Authorized Signature: _____ Date: _____



**MASTER AGREEMENT FOR ON-CALL
ENVIRONMENTAL PLANNING CONSULTING SERVICES
BETWEEN
THE CITY OF MILPITAS
AND
ENVIRONMENTAL SCIENCE ASSOCIATES (ESA)**

This Master Agreement ("Agreement") is made and entered into this 6th day of November, 2013 ("Effective Date"), by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "CITY"), and ENVIRONMENTAL SCIENCE ASSOCIATES, a California Corporation, (hereinafter "CONSULTANT"). CITY and CONSULTANT are hereafter individually referred to as a "Party" and hereafter collectively referred to as the "Parties."

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure additional professional services regarding technical expertise in the areas of environmental planning and consulting; and

WHEREAS, CITY solicited qualification proposals from various environmental consulting firms to provide assistance on an "as-needed basis." The scope of work for said services (hereafter "SCOPE OF SERVICES ") is attached hereto as **Exhibit A** and is hereby incorporated by reference; and

WHEREAS, CONSULTANT submitted its qualifications to CITY to provide on-call environmental planning and consulting services on an as-needed basis and is one of several CONSULTANTs selected by CITY to provide services; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform such services required by this Agreement; and

WHEREAS, the purpose of this Agreement is to retain CONSULTANT CITY to perform those services specified in SECTION 1 of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, CITY and CONSULTANT hereby agree as follows:

SECTION 1. SCOPE OF SERVICES.

- A. CITY will notify CONSULTANT when it needs environmental services that it believes CONSULTANT is qualified to perform. Nothing herein obligates CITY to notify CONSULTANT about every project requiring environmental consulting services. Upon notification from CITY, CONSULTANT will prepare a Scope of

Services containing a list of the tasks to be performed and a budget associated with those tasks which, which will be attached to a Service Order as set forth in **Exhibit F**.

- B. CONSULTANT will diligently perform the tasks outlined in the agreed upon Service Order and Scope of Services attached hereto as **Exhibit A** to this Agreement.

SECTION 2. TERM OF AGREEMENT.

The term of this Agreement shall begin on the Effective Date and expire on November 6, 2018, inclusive, subject to the provisions of SECTION 11 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in **Exhibit B** entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein.

SECTION 4. COMPENSATION.

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION Dollars (\$1,000,000.00). The rate and schedule of payment is set out in **Exhibit C** entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures if any. All work is subject to CITY review and approval prior to payment.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY'S employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. 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.

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. ASSIGNABILITY.

The Parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT'S obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

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 sole 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 9. INSURANCE REQUIREMENTS.

CONSULTANT agrees to have and maintain the policies set forth in **Exhibit D** entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the CITY of Milpitas as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this Agreement, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this Agreement immediately upon written notice.
- C. CITY's Director of Planning & Neighborhood Services ("CITY's Director") is empowered to terminate this Agreement on behalf of CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this Agreement, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and CONSULTANT agree that the law governing this Agreement shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. 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.

SECTION 14. COMMUNICATION PROTOCOL.

When engaged in environmental CONSULTANT work for the CITY on private development proposals, all communication between the private developer/project applicant and the CITY shall be through CITY staff. Under no circumstances shall the environmental CONSULTANT communicate directly with the private developer/project applicant without prior authorization of CITY staff.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAIVER.

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 17. CONSULTANT'S BOOKS AND RECORDS.

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this Agreement.
- B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the CITY Attorney, CITY Auditor, CITY Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at CITY Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT'S address indicated for receipt of notices in this Agreement.
- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT'S business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in CITY Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT'S representatives, or CONSULTANT'S successor-in-interest.

SECTION 18. 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.

CONSULTANT agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

SECTION 19. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in **Exhibit D** entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 20. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: CITY of Milpitas -- Planning
Attn: Steve McHarris
455 East Calaveras Blvd.
Milpitas, CA 95035

To CONSULTANT: ENVIRONMENTAL SCIENCE ASSOCIATES(ESA)
Attn: Jonathan Carey
550 Kearny Street, 8th Floor
San Francisco, CA 94108

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 21. VENUE.

In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, Milpitas, California.

SECTION 22. PRIOR AGREEMENTS AND AMENDMENTS.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.

SECTION 23. SUBCONSULTANTS

- A. Notwithstanding Section 7 above, CONSULTANT may use subconsultant(s) in performing the following work under this AGREEMENT.
- B. CONSULTANT shall be responsible for directing the work of the subconsultant(s) and for any compensation due to subconsultant(s). CITY assumes no responsibility whatsoever concerning such compensation.
- C. CONSULTANT shall employ subconsultant(s) only with the written approval of the CITY'S Director.

SECTION 24. 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.

SECTION 25. 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.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

"CITY"

APPROVED AS TO FORM:

CITY OF MILPITAS, a municipal corporation

MICHAEL J. OGAZ
CITY Attorney

By _____
THOMAS WILLIAMS
CITY Manager

Date _____

Environmental Science Associates (ESA)
Corporation
550 Kearny Street, 8th Floor
San Francisco, CA 94108

By  _____

Print Name:

CRESCENTIA BROWN.

Title:

DIRECTOR.

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EXHIBIT A

SCOPE OF SERVICES

CONSULTANT shall provide to the CITY's Department of Planning and Neighborhood Services on-call environmental consulting services for various CITY initiated and/or private development projects, on an as needed basis. CONSULTANT'S services shall be provided as requested by the CITY's Planning Director on an as needed basis, as set forth in a specific project Service Order in the form attached as **Exhibit F** to this Agreement.

SECTION 1. GENERAL PROVISIONS

- A. CONSULTANT shall perform all services to the satisfaction of the CITY'S Planning Director.
- B. All of the services furnished by the CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among environmental CONSULTANT professionals of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.
- C. All work performed under this AGREEMENT shall be authorized by a specific Service Order. Each Service Order given by CITY shall detail the nature of the specific services to be performed by the CONSULTANT, the time limit within which such services must be completed and the compensation for such services. Such details shall include a description of the project for which CONSULTANT shall perform the services, the geographic limits of the project, the type and scope of services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. CONSULTANT shall not perform any services unless authorized by a fully executed Service Order. Any unauthorized services performed by CONSULTANT shall be at no cost to the CITY.
- D. CONSULTANT shall begin work under the service order only after receipt of the service order bearing the approval signature of the Director and the signature of the CITY Attorney approving the service order as to form. Each authorized Service Order issued under this AGREEMENT by CITY shall be incorporated into the terms and conditions of this AGREEMENT.
- E. CITY will assign a Project Manager to facilitate each Service Order authorized under this AGREEMENT. CONSULTANT shall coordinate with

the designated Project Manager on the performance of each Service Order.

- F. CONSULTANT shall be responsible for the coordination with CITY and federal, state and local agencies that are necessary for all services authorized under this AGREEMENT.
- G. **Assignment of Personnel.** CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. The Service Order may name any specific personnel who shall be performing services. In the event that CITY, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, CONSULTANT shall, immediately upon receiving notice from CITY of such desire of CITY, reassign such person or persons.

SECTION 2. BASIC SERVICES.

- A. CONSULTANT shall provide environmental consulting services for various CITY and private development projects, as more particularly described in the authorized Service Order. The authorized Service Order may include any of the specific environmental tasks set forth below in Section 3. The authorized Service Order may also include any other environmental services described and agreed to be performed by the CONSULTANT, including, but not limited to, the following:
 - I. Input regarding environmental and land use compatibility issues during the initial evaluation of the project; and
 - II. Preparation of the appropriate program or project-level analysis and documents for each as necessary to comply with the CITY's environmental requirements, the requirements of the California Environmental Quality Act and its implementing regulations and guidelines, and/or, if necessary, the requirements of the National Environmental Policy Act and its implementing guidelines; and
 - III. Assist in public outreach efforts including public notification, coordination of the Office of Planning and Research (OPR) community meeting facilitation, and responding to public comments.

B. Service Initiation

Prepare Service Order - Upon request of CITY's Project Manager, CONSULTANT shall meet with the Project Manager to discuss the Project. CONSULTANT shall become familiar with the Project description, scope and goals and develop proposed scope of services.

CONSULTANT shall prepare a proposed scope of work for Project services consistent with CITY'S standard form of Service Order (attached hereto as **Exhibit F**). The proposed scope of services shall, at a minimum, include the following: Project Description, Scope of Services including deliverables, and Schedule of Performance and Schedule of Compensation. CONSULTANT shall submit the proposed scope of services to the Project Manager in electronic format.

The Project Manager will review and comment on proposed scope of work, and the parties shall agree on the terms of the final Service Order. CONSULTANT shall not be compensated for work performed in preparing a draft scope of services for a Service Order.

C. Service Implementation

Upon receipt of an authorized Service Order, CONSULTANT shall begin Project services described in the Service Order in accordance with the Schedule of Performance in the Service Order. For each Project, in addition to the specified services, products and deliverables detailed in the Service Order, CONSULTANT shall perform the following tasks:

Initial Meeting - Prior to beginning substantive work on a project, CONSULTANT shall meet and/or confer with CITY to establish procedures and notifications for any necessary meetings and communications with CITY staff; collect available data from the CITY and establish additional data needs and availability; confirm the format for all project products and deliverables; and address any preliminary project concerns. The meeting will be the primary opportunity to discuss the CITY'S intent, schedule and budget for the project.

The CONSULTANT shall prepare minutes of the meeting and distribute minutes to meeting participants.

Project Coordination Meetings - CONSULTANT shall attend and/or conduct project coordination meetings as required to perform authorized services and as required by Project Manager. CONSULTANT shall prepare minutes of each meeting and distribute minutes to participants.

Project Schedule - CONSULTANT shall prepare and submit a detailed schedule of performance consistent with the schedule contained in the Service Order to the Project manager for review and approval. CONSULTANT shall confirm or update the schedule monthly at a minimum. Any changes to the schedule shall only be permitted with the written approval of CITY's Project Manager.

Project Progress Report - CONSULTANT shall submit a monthly report to the Project Manager detailing progress on the Project services.

Request for Payment / Invoice - CONSULTANT shall submit progress payment invoices to the Project Manager monthly, as specified in **Exhibit C**. The updated Project schedule and progress report may be submitted as attachments to the invoice.

Project Record - CONSULTANT shall develop and maintain a detailed record of the chronology of the project tasks and milestones completed that are decisive, conclusive or relevant to the outcome of the Project. CONSULTANT shall submit a copy of the Project Record to the Project Manager prior to final payment for services performed on the Project. The Record shall be submitted in both paper and electronic format.

Project Documents - Aside from deliverables specified in the Service Order, and before the conclusion of the Project and final payment for services performed on the Project, CONSULTANT shall submit to the Project Manager a copy of all project documents that are decisive, conclusive or relevant to the outcome of the Project. Such documents may include, without limitation, topographical surveys and mapping, utility mapping, site inventories, base plans, reports and studies, permit applications and permits, environmental documentation, records of meetings, and communication documents. Documents shall be submitted in both paper and electronic format, as available.

SECTION 3. SPECIFIC ENVIRONMENTAL SERVICES.

- A. In addition to any other environmental services contained in the authorized Service Order, the Service Order may incorporate any of the services set forth below in this Section 3 by simply identifying the particular Task, in which case the Task is considered to have been incorporated into the authorized Service Order and CONSULTANT shall perform the Task as set forth herein.
- B. Tasks: Listed below are the Tasks which may be included in the Service Order depending on the scope of the project.

Task 1 - CEQA Documentation and Clearance

CONSULTANT shall prepare an Initial Study ("IS") and Mitigated Negative Declaration ("MND") for the Project to the satisfaction of the Director of Planning and Neighborhood Services. For purposes of this task, the CITY is assuming that a mitigated negative declaration is a sufficient and appropriate level of environmental review. If preparation of the IS leads the CONSULTANT to conclude that some other level of environmental review is needed, then CONSULTANT shall stop all work under this Service Order and consult with the CITY on how to proceed.

CONSULTANT shall prepare an Administrative Draft Initial Study/Mitigated Negative Declaration ("ADIS/MND") for the Project, in accordance with California Environmental Quality Act (CEQA) and CITY requirements. The ADIS/MND will describe in detail the Project, the regulatory setting, the existing environmental conditions on the Project site, and assess potentially significant impacts associated with the Project. The impact analysis will apply specific thresholds for determining the significance of impacts, consistent with CEQA, and other applicable standards. The analysis will identify all potential environmental impacts of the Project, including direct, indirect, temporary, and permanent. The CONSULTANT will identify mitigation measures for the significant impacts.

The ADIS/MND will contain the following required items: 1) Project Description, 2) Environmental Setting, Impacts and Mitigation 3) Mitigation Monitoring and Reporting Program; 4) List of Preparers; 5) References; 6) Appendices; and 7) appropriate graphics.

CONSULTANT will prepare the ADIS/MND in accordance with CEQA and the CITY requirements.

CITY shall obtain names and addresses of contiguous property owners within the required distance from Project site and provide appropriate notice of the Project to such property owners.

CONSULTANT shall revise the ADIS/MND based on comments received from the CITY and prepare the Initial Study/Mitigated Negative Declaration ("IS/MND"). Upon approval of the document by the CITY, CONSULTANT shall submit black and white copies of the IS/MND to the State Clearinghouse for processing and public circulation and submit copies to the CITY for local agency distribution. CITY will provide the Notice of Completion to accompany the copies. CONSULTANT shall submit one PDF copy of the IS and each technical report formatted to the CITY's specifications.

Upon conclusion of the 30-day public review period for the IS/MND, CONSULTANT shall prepare written responses to any comments received on the IS/MND, in coordination with the CITY.

After the 30 day review period and as directed by the CITY, CONSULTANT shall prepare a Mitigation and Monitoring Reporting Program for the Project in the format determined by the CITY. The monitoring program shall identify responsibility, timing, funding, and reporting of mitigation measures identified in the DIS.

Task 2 - NEPA Documentation and Clearance

If necessary, CONSULTANT shall provide National Environmental Policy Act (NEPA) documentation in accordance with the Council on Environmental Quality (CEQ) requirements. CONSULTANT shall prepare the following analysis (in addition to CEQA); the specific requirements of such analysis shall be done in accordance with the regulations of the NEPA administering agency (e.g. Caltrans, FTA, HUD, CDBG, etc.):

- Purpose and Need
- Section 106 and 4f Evaluation for Cultural Resources and Park and Historic Resources
- Floodplain Management and Wetland Evaluation per Executive Orders 11998 and 11990
- Environmental Justice Evaluation per Executive Order 12898
- NEPA noticing, e.g. Notice of Intent (stone as Notice of Preparation for an Environmental Impact Report)
- Natural Environmental Studies as required for biology for FHWA/Caltrans projects

Task 3 - Archaeological Survey

If necessary, CONSULTANT shall prepare an Archaeological Survey Report (ASR) and Historic Properties Survey Report (HPSR) - short form. The report shall be prepared by a qualified historian and/or archaeologist. These studies will require the CONSULTANT to perform the following tasks: 1) establishment of the anticipated Area of Potential Effect (APE), 2) complete archival research, 3) field survey and inventory, and 4) findings/recommendations.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 4 - Air Quality Evaluation

If necessary, CONSULTANT shall prepare an Air Quality evaluation. It will describe the regulatory setting for air quality policy set forth by the California Air Resources Board and the Bay Area Air Quality Management District (BAAQMD). CONSULTANT shall perform the air quality evaluation in accordance with the most current State BAAQMD CEQA guidelines applicable to such evaluations. The CONSULTANT shall identify mitigations as necessary.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 5 - Traffic Study/Impact Report

If necessary, CONSULTANT shall prepare a traffic study/impact report for the Project. CONSULTANT shall conduct a transportation impact analysis (TIA) as required by the CITY to evaluate traffic and/or parking impacts of the Project. If the TIA for the proposed Project shows that the proposed Project will generate more than 100 net new peak-hour trips on a typical weekday, the CONSULTANT shall prepare a Congestion Management Program (CMP) analysis in accordance with CITY guidelines.

CONSULTANT shall submit two draft copies of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 6 - Noise Report

If necessary, CONSULTANT shall prepare a noise report that describes the regulatory setting for controlling environmental noise, as set forth by the State of California and CITY noise standards.

CONSULTANT shall calculate the operational noise level at the Project site, and evaluate the operational noise level against the most current noise standards of the CITY and/or of those most current applicable noise standards of any other regulatory agencies. If the operational noise level exceeds the CITY's or those applicable noise standards of another regulatory agency, whichever is lower, CONSULTANT shall develop noise mitigation measures to achieve compliance with the standards. CONSULTANT shall prepare and submit a report of the Noise Studies to the CITY.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 7 - Biological Assessment Report

If necessary, CONSULTANT shall prepare a report which will identify the biological resources of the Project site, and assess potential impacts from the Project on these resources, based on a Natural Environment Study (NES) in accordance with the most current CEQA requirements, if CEQA is applicable to the Project, or NEPA requirements, if NEPA is applicable to the Project, and as directed by the CITY. The report shall be prepared by a qualified biologist. The discussion in the report will include a description of the regulatory environment, including but not limited to, requirements of U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, National Marine Fisheries Service, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and California Department

of Fish & Wildlife. The report will address the potentially significant impacts of the Project on biological resources.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 8 - Wetlands Delineation

If necessary, CONSULTANT shall prepare a wetlands delineation report per the most current U.S. Army Corp of Engineers requirements applicable to the preparation of such reports and as directed by the CITY.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 9 - Health Risk Assessment

If necessary, CONSULTANT shall prepare a site-specific Health Risk Assessment that will address potential human health impacts to the future users of the Project arising from the presence of the hazardous material found at the Project site. The Health Risk Assessment ("HRA") will be prepared by a toxicologist. CONSULTANT shall prepare the HRA in accordance with the most current Cal/EPA Supplemental Guidance for Human Health Multimedia Risk Assessments for Hazardous Waste Sites and Permitted Facilities (Cal/EPA 1996) regulations, and to the satisfaction of the Department of Planning and Neighborhood Services. The HRA will consider compound concentrations, transport and fate of compounds, exposure pathways, and property use. The HRA will involve the following steps:

- The selection of chemicals of concern
- Exposure assessment
- Toxicity assessment
- Risk characterization

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 10 - Phase I Environmental Site Assessment

If necessary, CONSULTANT shall perform a Phase I Environmental Site Assessment to identify potential presence of hazardous substances and soil or groundwater contamination on the site. CONSULTANT shall perform the Phase I Environmental Site Assessment per the most current American Society for

Testing Materials (ASTM) guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 11 - Phase II Environmental Site Assessment

If necessary, CONSULTANT shall perform a Phase II Environmental Site Assessment on the Project site. CONSULTANT shall perform the Phase II Environmental Site Assessment per the most current ASTM guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 12 - Habitat Mitigation and Monitoring Plan (HMMP) Report

If necessary, CONSULTANT shall prepare a Habitat Mitigation and Monitoring Plan Report that identifies the mitigation measures for the Project needed to avoid those habitat impacts discussed in the CEQA document. The HMMP shall include mitigation measures as necessary, as per previous related studies and as per meetings with the CITY. The CONSULTANT shall coordinate the preparation of the Habitat Mitigation and Monitoring Plan with the CITY. The CONSULTANT shall attend a total of two (2) meetings with the CITY in this task to review changes to HMMP and coordinate the preparation of the Plan. The HMMP shall be prepared in a format as directed and approved by the CITY and in coordination with the CITY Planning and Neighborhood Services Department

The CONSULTANT shall review the content of the Mitigation and Monitoring Plan with the CITY and identify features that are expected to be required by the CITY and regulatory agencies (e.g. riparian vegetation for CDFW 1601 agreement; wetland impact minimization measures for COE Nationwide Permit; water quality protection features for RWQCB permit).

CONSULTANT shall prepare the Habitat Mitigation and Monitoring Plan in a format acceptable to the regulatory agencies and to the CITY, and shall include tables, plans, graphics and other pertinent related information. The CONSULTANT shall prepare draft Project goals and a Draft Mitigation and Monitoring Outline and submit two (2) copies to the CITY for review comments and approval.

CONSULTANT shall revise the draft goals and draft Plan outline as per CITY and other regulatory agencies review and comments. Based on the draft Plan outline

and project goals, the CONSULTANT shall prepare a Draft Habitat Mitigation and Monitoring Plan and submit it to the CITY for review, comments and approval. CONSULTANT shall submit four (4) copies to the CITY. All plans and graphics shall be clear and concise. Base source maps shall be based on sources approved by the CITY. The Plan shall describe the goals of the habitat mitigation, the features of the mitigation site, a detailed implementation plan (i.e. site preparation techniques, schematic planting plan, schedule), establishment success criteria, and maintenance and monitoring activities.

CONSULTANT shall develop and include in the Habitat Mitigation and Monitoring Plan a preliminary habitat mitigation/revegetation plant list based on the expected type and size of habitat mitigation for the Project. The CONSULTANT shall submit the preliminary plant list to the CITY for review and approval. The plant list shall be a part of the Habitat Mitigation and Monitoring Plan.

The CONSULTANT shall prepare and submit to the CITY a pre-final "screencheck" of the Final Habitat Mitigation and Monitoring Plan based on comments from the CITY. The CONSULTANT shall submit two (2) copies to the CITY for review and approval. Upon review and approval by the CITY, the CONSULTANT shall prepare and submit to the CITY the Final Habitat Mitigation and Monitoring Plan. The CONSULTANT shall submit ten (10) copies, one camera ready (an original copy which can be clearly duplicated, including half tone copies of photographic graphics as directed by the CITY) copy, and one electronic copy to the CITY. The scope of services assumes that there will not be substantive changes to the mitigation site or mitigation design between the draft and screen-check final reports, such as a change in the size or location of the mitigation site(s).

Task 13 - Pre-construction Burrowing Owl Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a preconstruction survey for Burrowing Owls in accordance with the most current California Department of Fish and Wildlife (CDFW) survey protocol. The preconstruction survey shall be conducted by a qualified wildlife biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY. The CONSULTANT shall submit the results of the pre-construction survey to the CDFW for review and approval prior to site construction.

If, as a result of the survey, the CONSULTANT finds one or more active nests within the project area, the CONSULTANT shall have a qualified wildlife biologist mark the outside perimeter edge of a 250 feet buffer around each active nest with plastic fencing ("Buffer Area"). Prior to commencement of construction activities, the CONSULTANT shall have a qualified wildlife biologist inform the CITY's contractor and the contractor's workers of the presence of Burrowing Owls, their protected status, work boundaries, and measures to be implemented to avoid loss of these species during construction activities. The qualified wildlife biologist shall inform the construction workers that no construction activities are to occur within the Buffer Area until directed.

If pre-construction surveys are conducted during the non-breeding season and burrowing owls are observed on the site, the CONSULTANT shall consult with CDFW on burrowing owl eviction only after the habitat mitigation plan and mitigation agreement have been finalized between CDFW and the CITY.

Task 14 - Pre-Construction Nesting Raptor and Migratory Nesting Bird Survey.

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a pre-construction survey for nesting raptors and migratory nesting birds to determine if they occur within the project site in accordance with the most current CDFW protocol. The pre-construction survey shall be conducted by a qualified wildlife biologist. If raptors or migratory nesting birds are nesting on the site, the wildlife biologist shall recommend to the CITY a suitable buffer area between the nest site and construction activity. The wildlife biologist shall document that the young have fledged prior to construction work occurring within the buffer area.

CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 15 - Pre- Construction Bats Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading, demolition, or construction, whichever occurs first, the CONSULTANT shall conduct pre-construction surveys for roosting bats in accordance with the most

recent California Department of Fish and Wildlife (CDFW) protocols, if buildings or trees suitable for roosting bats are present on or within 50 feet of the construction site. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that bats are roosting on or within 50 feet of the construction site, the CONSULTANT shall consult with CDFW regarding the appropriate measures to minimize impacts to the roosting bats and provide this information to the CITY. Such measures may include maintenance of a disturbance-free buffer around an active maternity roost during the breeding season (generally 1 April to 31 August, or until the young are flying, whichever occurs first). If, as a result of the survey, the CONSULTANT finds roosting bats within structures or trees that will be physically disturbed by the Project, the CONSULTANT shall have a qualified wildlife biologist evict bats from those roosts during the non-breeding season (generally, 1 September to 31 March), in accordance with CDFW protocols. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 16 - Pre-Construction California Tiger Salamander Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct preconstruction surveys for California tiger salamanders in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by qualified wildlife biologist. If the pre-construction survey determines that California tiger salamanders are present on the construction site, the CONSULTANT shall consult with CDFW and U.S. Fish and Wildlife Services (USFWS) regarding the appropriate measures to take to avoid or minimize take of individuals and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds California tiger salamanders on the Project site, the CONSULTANT shall have a qualified wildlife biologist implement any measures that have been approved by the CDFW and USFWS for that particular Project, such as relocation of individuals. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW, USFWS, and the CITY.

Task 17 - Pre-Construction Nesting Pond Turtle Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final

survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct a preconstruction survey for nesting pond turtles in accordance with the most recent CDFW protocols. The pre-construction survey shall be performed by a qualified wildlife biologist. If the CONSULTANT identifies a suitable nesting habitat, the CONSULTANT will direct the CITY on where and how to install an exclusionary fence so as to exclude turtles from entering the construction work area. The CITY will be responsible for installing the fence prior to pond-turtle breeding season. The CITY will be responsible for removing the fencing when directed by the biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 18 - Pre-Construction Nesting Woodrat Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct preconstruction surveys for nesting woodrats in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that woodrats are nesting on the construction site, the CONSULTANT shall consult with CDFW regarding the best method for relocation of the nest(s) and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds one or more nests within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the nests in accordance with CDFW protocol. CONSULTANT shall document the findings of the survey in letter format and, submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 19 - Pre-Construction Red-legged Frog Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No more than fourteen (14) calendar days prior to commencement of grading or construction, whichever occurs earlier, in the riparian habitat, the CONSULTANT shall conduct pre-construction surveys for red-legged frogs in accordance with

the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If CONSULTANT observes any red-legged frogs, the CONSULTANT shall consult with the US Fish and Wildlife Service (USFWS) on avoidance measures before construction work proceeds and provide the information to the CITY. If, as a result of the survey, the CONSULTANT finds red-legged frogs within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the red-legged frogs in accordance with CDFW protocol. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 20 - Archaeological Field Monitoring

If necessary, the CITY shall provide the CONSULTANT with the grading and excavation plans for the Project. CONSULTANT shall review the grading and excavation plans to determine Project impacts within potentially sensitive archaeological areas. The review shall be done by a qualified archaeologist. The archaeologist shall develop an archaeological Field Monitoring Plan that includes the frequency and duration of the monitoring based upon his/her proposed/expected construction monitoring observations. If any cultural materials are exposed or discovered during either site preparation or subsurface construction activities, the CITY will issue a separate service order for additional archaeological work. The archaeologist shall submit a report summarizing his/her monitoring activities and findings (two hard copies and one electronic copy) to the CITY. One copy shall be provided to Director of Planning and Neighborhood Services.

Task 21 - Evaluation of Potential Mitigation Areas

If necessary, the CITY and regulatory agencies with jurisdiction over the Project and the approval of a habitat mitigation site have approved and adopted a Habitat Mitigation and Monitoring Plan for the Project. CONSULTANT shall perform the following services with regard to evaluating potential mitigation sites.

CONSULTANT shall review a proposed habitat mitigation site and assess the site for its suitability to provide environmental habitat mitigation for the Project. CONSULTANT shall review and assess the proposed habitat mitigation site in accordance with all applicable regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction over the Project and approval of the mitigation site, and as directed by the CITY. One field meeting with CITY staff shall be included in this task in order to review the potential mitigation site.

CONSULTANT shall prepare and submit a letter of findings (one hard copy and one electronic copy) that address the site's existing resources, its suitability to provide the required mitigation and the site's consistency with mitigation

measures outlined in the Project's existing Habitat Mitigation and Monitoring Plan.

Task 22 - Hydraulic Study

If necessary, CONSULTANT shall prepare a Hydraulic Study for the Project in accordance with the regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction of the Project and as directed by the CITY. The report shall address, but not be limited to drainage, conveyance, water quality and Nonpoint Source (NPS) requirements.

CONSULTANT shall submit one draft of the study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft study.

Task 23 - Tree Survey

If necessary, CONSULTANT shall prepare a tree survey for the Project as directed by the CITY. The tree survey will consist of the CONSULTANT visiting the construction site one time and documenting all trees by species, diameter, and condition, in accordance with CITY's Arborist and CITY's tree survey form, which will be provided by the CITY.

CONSULTANT shall submit one draft of the survey and then a final survey (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey.

Task 24 - Greenhouse Gas (GHG) Emission

If necessary, CONSULTANT shall evaluate greenhouse gas emissions related to the proposed project. The net increase in emissions resulting from the project will be quantified using current URBEMIS software and the Bay Area Air Quality Management District's (BAAQMD) Greenhouse gas model (BGM) calculator. The project's emissions will be compared to BAAQMD's adopted greenhouse gas emissions thresholds. Measures incorporated into the project to reduce greenhouse gas emissions will be described, as appropriate.

CONSULTANT shall submit one draft of the greenhouse gas emissions study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft study.

END OF EXHIBIT A

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EXHIBIT B

SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before November 6, 2018. Work shall be initiated on an as-needed basis at the request of CITY, and work shall be prosecuted pursuant to details defined in each specific Service Order, as set forth in EXHIBIT A above.

At the sole discretion of CITY, the term of this AGREEMENT may be extended up to six months by the CITY's Director by providing written notice to CONSULTANT.

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EXHIBIT C
COMPENSATION

Section 1. Maximum Compensation for Master Agreement.

1.1 Maximum Amount: The maximum amount of compensation the CITY will pay to the CONSULTANT under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION Dollars (\$1,000,000.00). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

1.2 Manner of Payment: Each Service Order will set forth whether the CITY will pay the CONSULTANT for work performed under such Service Order on a lump sum basis or on a time and material basis. Section 2 of this Exhibit applies to each Service Order where the CITY will pay the CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where the CITY will pay the CONSULTANT on a time and material basis for the work performed.

1.3 Schedule of Charges: Exhibit C-1 of this AGREEMENT, entitled "Schedule of Charges," set forth the CONSULTANT'S charge rates for various personnel as well as the amounts it charges for various special inspections and material tests. Regardless of whether the manner of payment contained in a Service Order is on a lump sum basis or on a time and material basis, compensation shall be determined and based upon the charge rates and charge amounts set forth in the Schedule of Charges. Charge rates will be updated on an annual basis.

Section 2. Lump Sum Payment.

2.1 Lump Sum Amount: The Service Order shall specify the lump sum amount the CITY will pay the CONSULTANT for performing the required work. The lump sum amount compensates the CONSULTANT for all its costs necessary to complete the work, including professional services and reimbursable expenses. CONSULTANT shall complete all work set forth in the Service Order for the lump sum amount.

2.2 Progress Payments: The Service Order may provide for the CITY to pay the lump sum amount by making progress payments. Under such circumstances, the Service Order shall specify appropriate milestones and the amount payable upon successful completion of each milestone. Upon completion of a milestone to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the appropriate progress payment. The CITY will make the

appropriate progress payment to the CONSULTANT within thirty (30) days of the Director's approval of the CONSULTANT's invoice.

2.3 Lump-Sum Payment: If the Service Order does not provide for the CITY to make progress payments, then the CITY shall make a single, lump-sum payment to the CONSULTANT upon completion of all the work to the Director's satisfaction. Upon completion of the work to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the lump-sum amount. The CITY shall pay the lump-sum amount within thirty (30) days of the Director's approval of the CONSULTANT'S invoice.

Section 3. Payment on a Time and Materials Basis.

3.1 Maximum Compensation: The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional and special inspection services, material tests and reimbursable expenses. The CONSULTANT shall complete all work it is required to perform under the Service Order for no more than the specified maximum amount. Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

3.2 Budget: If the Service Order itemizes budget amounts for any phase or category of work, then CONSULTANT shall not exceed such itemized amount without the Director's prior written authorization. The Director may approve, in writing, transfers of budget amounts between any of the phases or categories of work listed in the Service Order, provided the aggregate total compensation does not exceed the maximum compensation.

3.3 Rates: CITY will compensate CONSULTANT at the rates set forth in Exhibit C-1 of this Master Agreement, entitled "Schedule of Charges." Wage rates subject to Prevailing Wage Requirements are subject to revision at the time of issuance of a new Determination and subsequent Determinations for the duration of the AGREEMENT consistent with the provisions of Exhibit "C-1." Rates not subject to Prevailing Wage Requirements are subject to review annually upon request of the CONSULTANT in accordance with the provisions of Exhibit "C-1." The parties must enter into a written amendment to this AGREEMENT to reflect any new rates before such rates become effective. The Director of Planning & Neighborhood Services is authorized to execute such an amendment.

3.4 Reimbursable Expenses: The CITY will reimburse for expenses subject to the following:

Each Service Order will specify the maximum amount of expenses for which the CITY will reimburse the CONSULTANT. The CITY will reimburse expenses and the costs of sub-consultants, at actual cost plus an eight percent (8%) markup, unless a lower markup is provided for in the Exhibit D-1 of this Master

Agreement. Any expense the CONSULTANT incurs beyond the specified amount is at no cost to the CITY.

The following expenses are reimbursable to the extent the CONSULTANT documents to the Director's satisfaction that they were incurred in performing the work required by the Service Order: (a) the cost of mailing, shipping and/or delivery of documents or products to the CITY, (b) the cost of photographing, reproducing and/or copying, (c) the cost of the sub-consultant, provided the Director has preapproved, in writing, the use and cost of the sub-consultant, (d) telephone and fax charges, (e) the rental of any specialized equipment to the extent the Director has preapproved, in writing, the cost of such rental, and (f) any other expenses expressly identified in the service order as reimbursable. No other expenses are reimbursable unless the Director has preapproved, in writing, such expense.

3.5 Travel Time: For Service Orders on a time and materials basis, CITY will pay time for travel to and from the site when appropriate. An estimate of travel time will be included and negotiated with each service order. CITY will provide the CONSULTANT a place to store CONSULTANT's equipment at the project site, if necessary.

3.6 Invoice: Every month the CONSULTANT shall invoice the CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed, the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amounts of payments received to date under the Service Order and the balance of maximum compensation for remaining work on the Service Order.

Section 4. Others.

4.1 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.

EXHIBIT C-1

SCHEDULE OF CHARGES
(CONSULTANT Hourly Rates)

**Environmental Science Associates & Subsidiaries
2013 Schedule of Fees**

I. Personnel Category Rates

Charges will be made at the Category hourly rates set forth below for time spent on project management, consultation or meetings related to the project, field work, report preparation and review, travel time, etc. Time spent on projects in litigation, in depositions and providing expert testimony will be charged at the Category rate times 1.5.

Labor Category	Level I	Level II	Level III
Senior Director	225	240	255
Director	190	205	215
Managing Associate	155	170	185
Senior Associate	130	140	150
Associate	95	110	120
Project Technicians	75	90	110

- (a) The range of rates shown for each staff category reflects ESA staff qualifications, expertise and experience levels. These rate ranges allow our project managers to assemble the best project teams to meet the unique project requirements and client expectations for each opportunity.
- (b) From time to time, ESA retains outside professional and technical labor on a temporary basis to meet peak workload demands. Such contract labor may be charged at regular Employee Category rates.
- (c) ESA reserves the right to revise the Personnel Category Rates annually to reflect changes in its operating costs.

EXHIBIT D

INSURANCE

CONTRACTOR, at CONTRACTOR'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

Definition:

For purposes of this contract, the following definition applies: CITY of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the CITY of Milpitas, individually or collectively.

Insurance Required:

CONSULTANT must procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the contract and the results of that work by the CONSULTANT, his agents, representatives, employees or sub-consultants and provide documentation of same prior to commencement of work. The insurance must be maintained for the duration of the contract.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be at least as broad as:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability.
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (X) Professional Liability or Errors & Omissions Liability insurance appropriate to the CONSULTANT's profession.

Minimum Limits of Insurance:

CONSULTANT must maintain limits no less than:

1. **General Liability:** **\$1,000,000** per occurrence for bodily injury, personal (Including operations, injury and property damage. If Commercial General products and Liability insurance with a general aggregate limit is completed operations, used, either the general aggregate limit must apply as applicable.) separately to this project/location or the general aggregate limit must be twice the required occurrence limit.

- | | |
|---|--|
| 2. Automobile Liability: | \$1,000,000 per accident for bodily injury and property damage. |
| 3. Workers' Compensation Employer's Liability: | Statutory
\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee |
| 4. Professional Liability or Errors & Omissions Liability: | \$ 500,000 each occurrence
\$1,000,000 policy aggregate |

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the CITY, its officers, officials, employees and volunteers; or the CONSULTANT will provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The CITY of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the **CONSULTANT's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the CITY, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from

work performed by the Named Insured for the CITY. This provision also applies to the CONSULTANT's Workers' Compensation policy.

4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the CITY. If CONSULTANT's insurer refuses to provide this endorsement, CONSULTANT shall be responsible for providing written notice to the CITY that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

Sub-Consultants:

CONSULTANTS must include all sub-CONSULTANTS as insured under its policies or furnish separate certificates and endorsements for each sub-CONSULTANT. All coverage for sub-CONSULTANTS are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the CONSULTANT allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the CONSULTANT shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONSULTANT's delay and shall not be considered to increase cost to the CITY or increase time in which the Project shall be completed.

CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect, CITY may immediately terminate this Agreement.

EXHIBIT E

SPECIAL PROVISIONS

In the performance of this AGREEMENT:

1. Prohibition on Discrimination and Preferential Treatment

CONSULTANT shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by CITY, CONSULTANT shall file, and cause any subcontractor to file, compliance reports with the CITY. Compliance reports shall be in the form and filed at such times as may be designated by the CITY. Compliance reports shall contain such information and be supported by such data or records as may be requested by the CITY to determine whether CONSULTANT or its subcontractor is complying with the nondiscrimination and non-preference provisions of this Agreement.

3. Failure to Comply With Nondiscrimination Provisions.

If the CITY determines that the CONSULTANT has not complied with the nondiscrimination or non-preference provisions of this AGREEMENT, the CITY may terminate or suspend this AGREEMENT, in whole or in part.

4. Subcontracts.

CONSULTANT shall include provisions of this Agreement in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

5. **Prevailing Wage.** CONSULTANT acknowledges that portions of this contract are a Public Work, subject to the provisions of Section 1771 of the California Labor Code. CONSULTANT shall pay, or cause to be paid, prevailing wages, as set forth in the California Labor Code Section 1770 *et. seq.*, for all labor performed on the Project sites to facilitate the professional services provided under this AGREEMENT, including, but not limited to inspection, surveying, drilling, trenching, and excavation. CONSULTANT shall include in all agreements for such labor, a requirement that the employer provide all workers with written notice that prevailing wages apply.

CONSULTANT shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages as required by the State prevailing wage law. CONSULTANT shall provide to the CITY, at no cost to the CITY, a copy of all such records within ten (10) working days of a request for such records by CITY.

CONSULTANT expressly agrees that the compensation agreed to between the parties includes all payment necessary to meet State prevailing wage law requirements. CONSULTANT shall indemnify the CITY for any claims, costs or expenses which the CITY incurs as a result of CONSULTANT'S failure to pay, or cause to be paid, prevailing wages.

6. **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. **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.

**EXHIBIT F
SERVICE ORDER**

1 CONSULTANT MASTER AGREEMENT

This Service Order is made and entered into by and between the CITY OF MILPITAS, a municipal corporation of the State of California and ENVIRONMENTAL SCIENCE ASSOCIATES (ESA) Corporation. CITY and CONSULTANT have entered into a Master Service Agreement dated November 6, 2013 which authorizes the proposed services and compensation as outlined below.

2 SERVICE ORDER

Service Order No: _____ Date: _____

Service Order Compensation Amount: \$ _____

CONSULTANT Firm Name: _____

Address: _____

Contact: _____

Phone/Email: _____

3 PROJECT DESCRIPTION

Project Name: _____

Brief Description of Services: _____

Exhibit A: *Attach Full Scope of Services, Schedule of Performance and Compensation*

4 APPROVALS

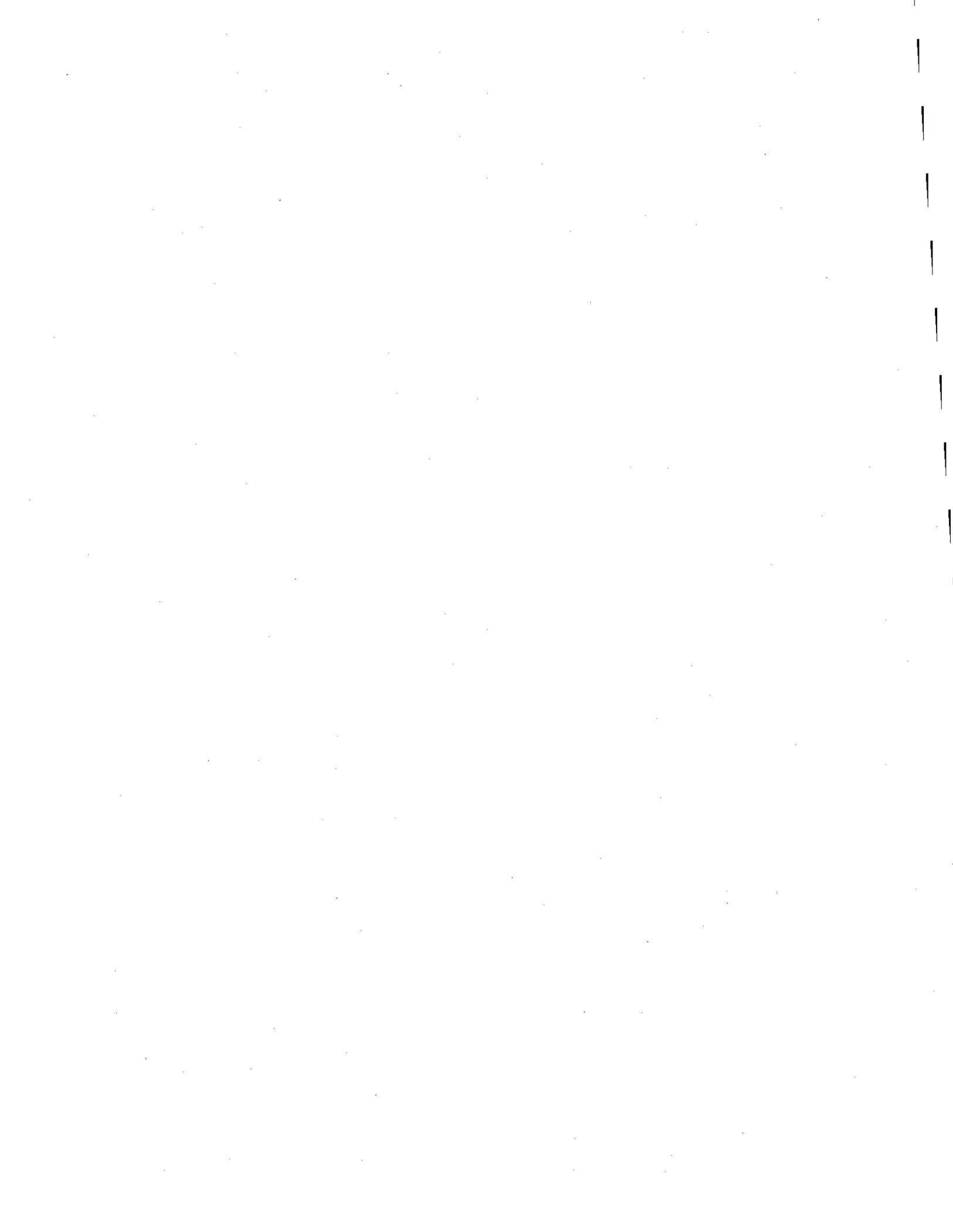
CONSULTANT: _____ Date: _____

Assistant CITY Attorney: _____ Date: _____

Director of Planning: _____ Date: _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated, and that funds are available as of this date of signature.

Authorized Signature: _____ Date: _____



**MASTER AGREEMENT FOR ON-CALL
ENVIRONMENTAL PLANNING CONSULTING SERVICES
BETWEEN
THE CITY OF MILPITAS
AND
AMY SKEWES-COX**

This Master Agreement ("Agreement") is made and entered into this 6th day of November, 2013 ("Effective Date"), by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "CITY"), and AMY SKEWES-COX, SOLE PROPRIETORSHIP, (hereinafter "CONSULTANT"). CITY and CONSULTANT are hereafter individually referred to as a "Party" and hereafter collectively referred to as the "Parties."

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure additional professional services regarding technical expertise in the areas of environmental planning and consulting; and

WHEREAS, CITY solicited qualification proposals from various environmental consulting firms to provide assistance on an "as-needed basis." The scope of work for said services (hereafter "SCOPE OF SERVICES ") is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, CONSULTANT submitted its qualifications to CITY to provide on-call environmental planning and consulting services on an as-needed basis and is one of several CONSULTANTs selected by CITY to provide services; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform such services required by this Agreement; and

WHEREAS, the purpose of this Agreement is to retain CONSULTANT CITY to perform those services specified in SECTION 1 of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, CITY and CONSULTANT hereby agree as follows:

SECTION 1. SCOPE OF SERVICES.

- A. CITY will notify CONSULTANT when it needs environmental services that it believes CONSULTANT is qualified to perform. Nothing herein obligates CITY to notify CONSULTANT about every project requiring environmental consulting services. Upon notification from CITY, CONSULTANT will prepare a Scope of

Services containing a list of the tasks to be performed and a budget associated with those tasks which, which will be attached to a Service Order as set forth in Exhibit F.

- B. CONSULTANT will diligently perform the tasks outlined in the agreed upon Service Order and Scope of Services attached hereto as Exhibit A to this Agreement.

SECTION 2. TERM OF AGREEMENT.

The term of this Agreement shall begin on the Effective Date and expire on November 6, 2018, inclusive, subject to the provisions of SECTION 11 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in Exhibit B entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein.

SECTION 4. COMPENSATION.

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION Dollars (\$1,000,000.00). The rate and schedule of payment is set out in Exhibit C entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures if any. All work is subject to CITY review and approval prior to payment.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY'S employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. 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.

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. ASSIGNABILITY.

The Parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT'S obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

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 sole 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 9. INSURANCE REQUIREMENTS.

CONSULTANT agrees to have and maintain the policies set forth in **Exhibit D** entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the CITY of Milpitas as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this Agreement, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this Agreement immediately upon written notice.
- C. CITY's Director of Planning & Neighborhood Services ("CITY's Director") is empowered to terminate this Agreement on behalf of CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this Agreement, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and CONSULTANT agree that the law governing this Agreement shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. 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.

SECTION 14. COMMUNICATION PROTOCOL.

When engaged in environmental CONSULTANT work for the CITY on private development proposals, all communication between the private developer/project applicant and the CITY shall be through CITY staff. Under no circumstances shall the environmental CONSULTANT communicate directly with the private developer/project applicant without prior authorization of CITY staff.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAIVER.

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 17. CONSULTANT'S BOOKS AND RECORDS.

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this Agreement.
- B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the CITY Attorney, CITY Auditor, CITY Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at CITY Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT'S address indicated for receipt of notices in this Agreement.
- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT'S business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in CITY Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT'S representatives, or CONSULTANT'S successor-in-interest.

SECTION 18. 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

SECTION 23. SUBCONSULTANTS

- A. Notwithstanding Section 7 above, CONSULTANT may use subconsultant(s) in performing the following work under this AGREEMENT.
- B. CONSULTANT shall be responsible for directing the work of the subconsultant(s) and for any compensation due to subconsultant(s). CITY assumes no responsibility whatsoever concerning such compensation.
- C. CONSULTANT shall employ subconsultant(s) only with the written approval of the CITY'S Director.

SECTION 24. 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.

SECTION 25. 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.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

"CITY"

APPROVED AS TO FORM:

CITY OF MILPITAS, a municipal corporation

MICHAEL J. OGAZ
CITY Attorney

By _____
THOMAS WILLIAMS
CITY Manager

Date _____

AMY SKEWES-COX
Sole proprietor
P.O. Box 422
Ross, CA 94957

By *Amy Skewes-Cox*
Print Name: *Amy Skewes-Cox*
Title: *Sole Proprietor*

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EXHIBIT A
SCOPE OF SERVICES

CONSULTANT shall provide to the CITY's Department of Planning and Neighborhood Services on-call environmental consulting services for various CITY initiated and/or private development projects, on an as needed basis. CONSULTANT'S services shall be provided as requested by the CITY's Planning Director on an as needed basis, as set forth in a specific project Service Order in the form attached as **Exhibit F** to this Agreement.

SECTION 1. GENERAL PROVISIONS

- A. CONSULTANT shall perform all services to the satisfaction of the CITY'S Planning Director.
- B. All of the services furnished by the CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among environmental CONSULTANT professionals of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.
- C. All work performed under this AGREEMENT shall be authorized by a specific Service Order. Each Service Order given by CITY shall detail the nature of the specific services to be performed by the CONSULTANT, the time limit within which such services must be completed and the compensation for such services. Such details shall include a description of the project for which CONSULTANT shall perform the services, the geographic limits of the project, the type and scope of services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. CONSULTANT shall not perform any services unless authorized by a fully executed Service Order. Any unauthorized services performed by CONSULTANT shall be at no cost to the CITY.
- D. CONSULTANT shall begin work under the service order only after receipt of the service order bearing the approval signature of the Director and the signature of the CITY Attorney approving the service order as to form. Each authorized Service Order issued under this AGREEMENT by CITY shall be incorporated into the terms and conditions of this AGREEMENT.
- E. CITY will assign a Project Manager to facilitate each Service Order authorized under this AGREEMENT. CONSULTANT shall coordinate with

the designated Project Manager on the performance of each Service Order.

- F. CONSULTANT shall be responsible for the coordination with CITY and federal, state and local agencies that are necessary for all services authorized under this AGREEMENT.
- G. **Assignment of Personnel.** CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. The Service Order may name any specific personnel who shall be performing services. In the event that CITY, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, CONSULTANT shall, immediately upon receiving notice from CITY of such desire of CITY, reassign such person or persons.

SECTION 2. BASIC SERVICES.

- A. CONSULTANT shall provide environmental consulting services for various CITY and private development projects, as more particularly described in the authorized Service Order. The authorized Service Order may include any of the specific environmental tasks set forth below in Section 3. The authorized Service Order may also include any other environmental services described and agreed to be performed by the CONSULTANT, including, but not limited to, the following:
 - I. Input regarding environmental and land use compatibility issues during the initial evaluation of the project; and
 - II. Preparation of the appropriate program or project-level analysis and documents for each as necessary to comply with the CITY's environmental requirements, the requirements of the California Environmental Quality Act and its implementing regulations and guidelines, and/or, if necessary, the requirements of the National Environmental Policy Act and its implementing guidelines; and
 - III. Assist in public outreach efforts including public notification, coordination of the Office of Planning and Research (OPR) community meeting facilitation, and responding to public comments.

B. Service Initiation

Prepare Service Order - Upon request of CITY's Project Manager, CONSULTANT shall meet with the Project Manager to discuss the Project. CONSULTANT shall become familiar with the Project description, scope and goals and develop proposed scope of services.

CONSULTANT shall prepare a proposed scope of work for Project services consistent with CITY'S standard form of Service Order (attached hereto as **Exhibit F**). The proposed scope of services shall, at a minimum, include the following: Project Description, Scope of Services including deliverables, and Schedule of Performance and Schedule of Compensation. CONSULTANT shall submit the proposed scope of services to the Project Manager in electronic format.

The Project Manager will review and comment on proposed scope of work, and the parties shall agree on the terms of the final Service Order. CONSULTANT shall not be compensated for work performed in preparing a draft scope of services for a Service Order.

C. Service Implementation

Upon receipt of an authorized Service Order, CONSULTANT shall begin Project services described in the Service Order in accordance with the Schedule of Performance in the Service Order. For each Project, in addition to the specified services, products and deliverables detailed in the Service Order, CONSULTANT shall perform the following tasks:

Initial Meeting - Prior to beginning substantive work on a project, CONSULTANT shall meet and/or confer with CITY to establish procedures and notifications for any necessary meetings and communications with CITY staff; collect available data from the CITY and establish additional data needs and availability; confirm the format for all project products and deliverables; and address any preliminary project concerns. The meeting will be the primary opportunity to discuss the CITY'S intent, schedule and budget for the project.

The CONSULTANT shall prepare minutes of the meeting and distribute minutes to meeting participants.

Project Coordination Meetings - CONSULTANT shall attend and/or conduct project coordination meetings as required to perform authorized services and as required by Project Manager. CONSULTANT shall prepare minutes of each meeting and distribute minutes to participants.

Project Schedule - CONSULTANT shall prepare and submit a detailed schedule of performance consistent with the schedule contained in the Service Order to the Project manager for review and approval. CONSULTANT shall confirm or update the schedule monthly at a minimum. Any changes to the schedule shall only be permitted with the written approval of CITY'S Project Manager.

Project Progress Report - CONSULTANT shall submit a monthly report to the Project Manager detailing progress on the Project services.

Request for Payment / Invoice - CONSULTANT shall submit progress payment invoices to the Project Manager monthly, as specified in **Exhibit C**. The updated Project schedule and progress report may be submitted as attachments to the invoice.

Project Record - CONSULTANT shall develop and maintain a detailed record of the chronology of the project tasks and milestones completed that are decisive, conclusive or relevant to the outcome of the Project. CONSULTANT shall submit a copy of the Project Record to the Project Manager prior to final payment for services performed on the Project. The Record shall be submitted in both paper and electronic format.

Project Documents - Aside from deliverables specified in the Service Order, and before the conclusion of the Project and final payment for services performed on the Project, CONSULTANT shall submit to the Project Manager a copy of all project documents that are decisive, conclusive or relevant to the outcome of the Project. Such documents may include, without limitation, topographical surveys and mapping, utility mapping, site inventories, base plans, reports and studies, permit applications and permits, environmental documentation, records of meetings, and communication documents. Documents shall be submitted in both paper and electronic format, as available.

SECTION 3. SPECIFIC ENVIRONMENTAL SERVICES.

- A. In addition to any other environmental services contained in the authorized Service Order, the Service Order may incorporate any of the services set forth below in this Section 3 by simply identifying the particular Task, in which case the Task is considered to have been incorporated into the authorized Service Order and CONSULTANT shall perform the Task as set forth herein.
- B. Tasks: Listed below are the Tasks which may be included in the Service Order depending on the scope of the project.

Task 1 - CEQA Documentation and Clearance

CONSULTANT shall prepare an Initial Study ("IS") and Mitigated Negative Declaration ("MND") for the Project to the satisfaction of the Director of Planning and Neighborhood Services. For purposes of this task, the CITY is assuming that a mitigated negative declaration is a sufficient and appropriate level of environmental review. If preparation of the IS leads the CONSULTANT to conclude that some other level of environmental review is needed, then CONSULTANT shall stop all work under this Service Order and consult with the CITY on how to proceed.

CONSULTANT shall prepare an Administrative Draft Initial Study/Mitigated Negative Declaration ("ADIS/MND") for the Project, in accordance with California Environmental Quality Act (CEQA) and CITY requirements. The ADIS/MND will describe in detail the Project, the regulatory setting, the existing environmental conditions on the Project site, and assess potentially significant impacts associated with the Project. The impact analysis will apply specific thresholds for determining the significance of impacts, consistent with CEQA, and other applicable standards. The analysis will identify all potential environmental impacts of the Project, including direct, indirect, temporary, and permanent. The CONSULTANT will identify mitigation measures for the significant impacts.

The ADIS/MND will contain the following required items: 1) Project Description, 2) Environmental Setting, Impacts and Mitigation 3) Mitigation Monitoring and Reporting Program; 4) List of Preparers; 5) References; 6) Appendices; and 7) appropriate graphics.

CONSULTANT will prepare the ADIS/MND in accordance with CEQA and the CITY requirements.

CITY shall obtain names and addresses of contiguous property owners within the required distance from Project site and provide appropriate notice of the Project to such property owners.

CONSULTANT shall revise the ADIS/MND based on comments received from the CITY and prepare the Initial Study/Mitigated Negative Declaration ("IS/MND"). Upon approval of the document by the CITY, CONSULTANT shall submit black and white copies of the IS/MND to the State Clearinghouse for processing and public circulation and submit copies to the CITY for local agency distribution. CITY will provide the Notice of Completion to accompany the copies. CONSULTANT shall submit one PDF copy of the IS and each technical report formatted to the CITY's specifications.

Upon conclusion of the 30-day public review period for the IS/MND, CONSULTANT shall prepare written responses to any comments received on the IS/MND, in coordination with the CITY.

After the 30 day review period and as directed by the CITY, CONSULTANT shall prepare a Mitigation and Monitoring Reporting Program for the Project in the format determined by the CITY. The monitoring program shall identify responsibility, timing, funding, and reporting of mitigation measures identified in the DIS.

Task 2 - NEPA Documentation and Clearance

If necessary, CONSULTANT shall provide National Environmental Policy Act (NEPA) documentation in accordance with the Council on Environmental Quality (CEQ) requirements. CONSULTANT shall prepare the following analysis (in addition to CEQA); the specific requirements of such analysis shall be done in accordance with the regulations of the NEPA administering agency (e.g. Caltrans, FTA, HUD, CDBG, etc.):

- Purpose and Need
- Section 106 and 4f Evaluation for Cultural Resources and Park and Historic Resources
- Floodplain Management and Wetland Evaluation per Executive Orders 11998 and 11990
- Environmental Justice Evaluation per Executive Order 12898
- NEPA noticing, e.g. Notice of Intent (stone as Notice of Preparation for an Environmental Impact Report)
- Natural Environmental Studies as required for biology for FHWA/Caltrans projects

Task 3 - Archaeological Survey

If necessary, CONSULTANT shall prepare an Archaeological Survey Report (ASR) and Historic Properties Survey Report (HPSR) - short form. The report shall be prepared by a qualified historian and/or archaeologist. These studies will require the CONSULTANT to perform the following tasks: 1) establishment of the anticipated Area of Potential Effect (APE), 2) complete archival research, 3) field survey and inventory, and 4) findings/recommendations.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 4 -Air Quality Evaluation

If necessary, CONSULTANT shall prepare an Air Quality evaluation. It will describe the regulatory setting for air quality policy set forth by the California Air Resources Board and the Bay Area Air Quality Management District (BAAQMD). CONSULTANT shall perform the air quality evaluation in accordance with the most current State BAAQMD CEQA guidelines applicable to such evaluations. The CONSULTANT shall identify mitigations as necessary.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 5 - Traffic Study/Impact Report

If necessary, CONSULTANT shall prepare a traffic study/impact report for the Project. CONSULTANT shall conduct a transportation impact analysis (TIA) as required by the CITY to evaluate traffic and/or parking impacts of the Project. If the TIA for the proposed Project shows that the proposed Project will generate more than 100 net new peak-hour trips on a typical weekday, the CONSULTANT shall prepare a Congestion Management Program (CMP) analysis in accordance with CITY guidelines.

CONSULTANT shall submit two draft copies of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 6 - Noise Report

If necessary, CONSULTANT shall prepare a noise report that describes the regulatory setting for controlling environmental noise, as set forth by the State of California and CITY noise standards.

CONSULTANT shall calculate the operational noise level at the Project site, and evaluate the operational noise level against the most current noise standards of the CITY and/or of those most current applicable noise standards of any other regulatory agencies. If the operational noise level exceeds the CITY's or those applicable noise standards of another regulatory agency, whichever is lower, CONSULTANT shall develop noise mitigation measures to achieve compliance with the standards. CONSULTANT shall prepare and submit a report of the Noise Studies to the CITY.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 7 - Biological Assessment Report

If necessary, CONSULTANT shall prepare a report which will identify the biological resources of the Project site, and assess potential impacts from the Project on these resources, based on a Natural Environment Study (NES) in accordance with the most current CEQA requirements, if CEQA is applicable to the Project, or NEPA requirements, if NEPA is applicable to the Project, and as directed by the CITY. The report shall be prepared by a qualified biologist. The discussion in the report will include a description of the regulatory environment, including but not limited to, requirements of U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, National Marine Fisheries Service, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and California Department

of Fish & Wildlife. The report will address the potentially significant impacts of the Project on biological resources.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 8 - Wetlands Delineation

If necessary, CONSULTANT shall prepare a wetlands delineation report per the most current U.S. Army Corp of Engineers requirements applicable to the preparation of such reports and as directed by the CITY.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 9 - Health Risk Assessment

If necessary, CONSULTANT shall prepare a site-specific Health Risk Assessment that will address potential human health impacts to the future users of the Project arising from the presence of the hazardous material found at the Project site. The Health Risk Assessment ("HRA") will be prepared by a toxicologist. CONSULTANT shall prepare the HRA in accordance with the most current Cal/EPA Supplemental Guidance for Human Health Multimedia Risk Assessments for Hazardous Waste Sites and Permitted Facilities (Cal/EPA 1996) regulations, and to the satisfaction of the Department of Planning and Neighborhood Services. The HRA will consider compound concentrations, transport and fate of compounds, exposure pathways, and property use. The HRA will involve the following steps:

- The selection of chemicals of concern
- Exposure assessment
- Toxicity assessment
- Risk characterization

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 10 - Phase I Environmental Site Assessment

If necessary, CONSULTANT shall perform a Phase I Environmental Site Assessment to identify potential presence of hazardous substances and soil or groundwater contamination on the site. CONSULTANT shall perform the Phase I Environmental Site Assessment per the most current American Society for

Testing Materials (ASTM) guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 11 - Phase II Environmental Site Assessment

If necessary, CONSULTANT shall perform a Phase II Environmental Site Assessment on the Project site. CONSULTANT shall perform the Phase II Environmental Site Assessment per the most current ASTM guidelines applicable to such assessments and the CITY's requirements.

CONSULTANT shall submit one draft of the report to the CITY and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft report.

Task 12 - Habitat Mitigation and Monitoring Plan (HMMP) Report

If necessary, CONSULTANT shall prepare a Habitat Mitigation and Monitoring Plan Report that identifies the mitigation measures for the Project needed to avoid those habitat impacts discussed in the CEQA document. The HMMP shall include mitigation measures as necessary, as per previous related studies and as per meetings with the CITY. The CONSULTANT shall coordinate the preparation of the Habitat Mitigation and Monitoring Plan with the CITY. The CONSULTANT shall attend a total of two (2) meetings with the CITY in this task to review changes to HMMP and coordinate the preparation of the Plan. The HMMP shall be prepared in a format as directed and approved by the CITY and in coordination with the CITY Planning and Neighborhood Services Department

The CONSULTANT shall review the content of the Mitigation and Monitoring Plan with the CITY and identify features that are expected to be required by the CITY and regulatory agencies (e.g. riparian vegetation for CDFW 1601 agreement; wetland impact minimization measures for COE Nationwide Permit; water quality protection features for RWQCB permit).

CONSULTANT shall prepare the Habitat Mitigation and Monitoring Plan in a format acceptable to the regulatory agencies and to the CITY, and shall include tables, plans, graphics and other pertinent related information. The CONSULTANT shall prepare draft Project goals and a Draft Mitigation and Monitoring Outline and submit two (2) copies to the CITY for review comments and approval.

CONSULTANT shall revise the draft goals and draft Plan outline as per CITY and other regulatory agencies review and comments. Based on the draft Plan outline

and project goals, the CONSULTANT shall prepare a Draft Habitat Mitigation and Monitoring Plan and submit it to the CITY for review, comments and approval. CONSULTANT shall submit four (4) copies to the CITY. All plans and graphics shall be clear and concise. Base source maps shall be based on sources approved by the CITY. The Plan shall describe the goals of the habitat mitigation, the features of the mitigation site, a detailed implementation plan (i.e. site preparation techniques, schematic planting plan, schedule), establishment success criteria, and maintenance and monitoring activities.

CONSULTANT shall develop and include in the Habitat Mitigation and Monitoring Plan a preliminary habitat mitigation/revegetation plant list based on the expected type and size of habitat mitigation for the Project. The CONSULTANT shall submit the preliminary plant list to the CITY for review and approval. The plant list shall be a part of the Habitat Mitigation and Monitoring Plan.

The CONSULTANT shall prepare and submit to the CITY a pre-final "screencheck" of the Final Habitat Mitigation and Monitoring Plan based on comments from the CITY. The CONSULTANT shall submit two (2) copies to the CITY for review and approval. Upon review and approval by the CITY, the CONSULTANT shall prepare and submit to the CITY the Final Habitat Mitigation and Monitoring Plan. The CONSULTANT shall submit ten (10) copies, one camera ready (an original copy which can be clearly duplicated, including half tone copies of photographic graphics as directed by the CITY) copy, and one electronic copy to the CITY. The scope of services assumes that there will not be substantive changes to the mitigation site or mitigation design between the draft and screen-check final reports, such as a change in the size or location of the mitigation site(s).

Task 13 - Pre-construction Burrowing Owl Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a preconstruction survey for Burrowing Owls in accordance with the most current California Department of Fish and Wildlife (CDFW) survey protocol. The preconstruction survey shall be conducted by a qualified wildlife biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY. The CONSULTANT shall submit the results of the pre-construction survey to the CDFW for review and approval prior to site construction.

If, as a result of the survey, the CONSULTANT finds one or more active nests within the project area, the CONSULTANT shall have a qualified wildlife biologist mark the outside perimeter edge of a 250 foot buffer around each active nest with plastic fencing ("Buffer Area"). Prior to commencement of construction activities, the CONSULTANT shall have a qualified wildlife biologist inform the CITY's contractor and the contractor's workers of the presence of Burrowing Owls, their protected status, work boundaries, and measures to be implemented to avoid loss of these species during construction activities. The qualified wildlife biologist shall inform the construction workers that no construction activities are to occur within the Buffer Area until directed.

If pre-construction surveys are conducted during the non-breeding season and burrowing owls are observed on the site, the CONSULTANT shall consult with CDFW on burrowing owl eviction only after the habitat mitigation plan and mitigation agreement have been finalized between CDFW and the CITY.

Task 14 - Pre-Construction Nesting Raptor and Migratory Nesting Bird Survey.

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the CONSULTANT shall conduct a pre-construction survey for nesting raptors and migratory nesting birds to determine if they occur within the project site in accordance with the most current CDFW protocol. The pre-construction survey shall be conducted by a qualified wildlife biologist. If raptors or migratory nesting birds are nesting on the site, the wildlife biologist shall recommend to the CITY a suitable buffer area between the nest site and construction activity. The wildlife biologist shall document that the young have fledged prior to construction work occurring within the buffer area. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 15 - Pre- Construction Bats Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading, demolition, or construction, whichever occurs first, the CONSULTANT shall conduct pre-construction surveys for roosting bats in accordance with the most

recent California Department of Fish and Wildlife (CDFW) protocols, if buildings or trees suitable for roosting bats are present on or within 50 feet of the construction site. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that bats are roosting on or within 50 feet of the construction site, the CONSULTANT shall consult with CDFW regarding the appropriate measures to minimize impacts to the roosting bats and provide this information to the CITY. Such measures may include maintenance of a disturbance-free buffer around an active maternity roost during the breeding season (generally 1 April to 31 August, or until the young are flying, whichever occurs first). If, as a result of the survey, the CONSULTANT finds roosting bats within structures or trees that will be physically disturbed by the Project, the CONSULTANT shall have a qualified wildlife biologist evict bats from those roosts during the non-breeding season (generally, 1 September to 31 March), in accordance with CDFW protocols. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 16 - Pre-Construction California Tiger Salamander Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct preconstruction surveys for California tiger salamanders in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by qualified wildlife biologist. If the pre-construction survey determines that California tiger salamanders are present on the construction site, the CONSULTANT shall consult with CDFW and U.S. Fish and Wildlife Services (USFWS) regarding the appropriate measures to take to avoid or minimize take of individuals and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds California tiger salamanders on the Project site, the CONSULTANT shall have a qualified wildlife biologist implement any measures that have been approved by the CDFW and USFWS for that particular Project, such as relocation of individuals. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW, USFWS, and the CITY.

Task 17 - Pre-Construction Nesting Pond Turtle Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final

survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct a preconstruction survey for nesting pond turtles in accordance with the most recent CDFW protocols. The pre-construction survey shall be performed by a qualified wildlife biologist. If the CONSULTANT identifies a suitable nesting habitat, the CONSULTANT will direct the CITY on where and how to install an exclusionary fence so as to exclude turtles from entering the construction work area. The CITY will be responsible for installing the fence prior to pond-turtle breeding season. The CITY will be responsible for removing the fencing when directed by the biologist. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CITY.

Task 18 - Pre-Construction Nesting Woodrat Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the CONSULTANT shall conduct preconstruction surveys for nesting woodrats in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that woodrats are nesting on the construction site, the CONSULTANT shall consult with CDFW regarding the best method for relocation of the nest(s) and provide this information to the CITY. If, as a result of the survey, the CONSULTANT finds one or more nests within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the nests in accordance with CDFW protocol. CONSULTANT shall document the findings of the survey in letter format and, submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 19 - Pre-Construction Red-legged Frog Survey

If necessary, CONSULTANT shall conduct pre-construction surveys as outlined below. CONSULTANT shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey report.

No more than fourteen (14) calendar days prior to commencement of grading or construction, whichever occurs earlier, in the riparian habitat, the CONSULTANT shall conduct pre-construction surveys for red-legged frogs in accordance with

the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If CONSULTANT observes any red-legged frogs, the CONSULTANT shall consult with the US Fish and Wildlife Service (USFWS) on avoidance measures before construction work proceeds and provide the information to the CITY. If, as a result of the survey, the CONSULTANT finds red-legged frogs within the Project area, the CONSULTANT shall have a qualified wildlife biologist re-locate the red-legged frogs in accordance with CDFW protocol. CONSULTANT shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the CITY.

Task 20 - Archaeological Field Monitoring

If necessary, the CITY shall provide the CONSULTANT with the grading and excavation plans for the Project. CONSULTANT shall review the grading and excavation plans to determine Project impacts within potentially sensitive archaeological areas. The review shall be done by a qualified archaeologist. The archaeologist shall develop an archaeological Field Monitoring Plan that includes the frequency and duration of the monitoring based upon his/her proposed/expected construction monitoring observations. If any cultural materials are exposed or discovered during either site preparation or subsurface construction activities, the CITY will issue a separate service order for additional archaeological work. The archaeologist shall submit a report summarizing his/her monitoring activities and findings (two hard copies and one electronic copy) to the CITY. One copy shall be provided to Director of Planning and Neighborhood Services.

Task 21 - Evaluation of Potential Mitigation Areas

If necessary, the CITY and regulatory agencies with jurisdiction over the Project and the approval of a habitat mitigation site have approved and adopted a Habitat Mitigation and Monitoring Plan for the Project. CONSULTANT shall perform the following services with regard to evaluating potential mitigation sites.

CONSULTANT shall review a proposed habitat mitigation site and assess the site for its suitability to provide environmental habitat mitigation for the Project. CONSULTANT shall review and assess the proposed habitat mitigation site in accordance with all applicable regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction over the Project and approval of the mitigation site, and as directed by the CITY. One field meeting with CITY staff shall be included in this task in order to review the potential mitigation site.

CONSULTANT shall prepare and submit a letter of findings (one hard copy and one electronic copy) that address the site's existing resources, its suitability to provide the required mitigation and the site's consistency with mitigation

measures outlined in the Project's existing Habitat Mitigation and Monitoring Plan.

Task 22 - Hydraulic Study

If necessary, CONSULTANT shall prepare a Hydraulic Study for the Project in accordance with the regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction of the Project and as directed by the CITY. The report shall address, but not be limited to drainage, conveyance, water quality and Nonpoint Source (NPS) requirements.

CONSULTANT shall submit one draft of the study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft study.

Task 23 - Tree Survey

If necessary, CONSULTANT shall prepare a tree survey for the Project as directed by the CITY. The tree survey will consist of the CONSULTANT visiting the construction site one time and documenting all trees by species, diameter, and condition, in accordance with CITY's Arborist and CITY's tree survey form, which will be provided by the CITY.

CONSULTANT shall submit one draft of the survey and then a final survey (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft survey.

Task 24 - Greenhouse Gas (GHG) Emission

If necessary, CONSULTANT shall evaluate greenhouse gas emissions related to the proposed project. The net increase in emissions resulting from the project will be quantified using current URBEMIS software and the Bay Area Air Quality Management District's (BAAQMD) Greenhouse gas model (BGM) calculator. The project's emissions will be compared to BAAQMD's adopted greenhouse gas emissions thresholds. Measures incorporated into the project to reduce greenhouse gas emissions will be described, as appropriate.

CONSULTANT shall submit one draft of the greenhouse gas emissions study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the CITY on the draft study.

END OF EXHIBIT A

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EXHIBIT B

SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before November 6, 2018. Work shall be initiated on an as-needed basis at the request of CITY, and work shall be prosecuted pursuant to details defined in each specific Service Order, as set forth in EXHIBIT A above.

At the sole discretion of CITY, the term of this AGREEMENT may be extended up to six months by the CITY's Director by providing written notice to CONSULTANT.

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EXHIBIT C
COMPENSATION

Section 1. Maximum Compensation for Master Agreement.

1.1 Maximum Amount: The maximum amount of compensation the CITY will pay to the CONSULTANT under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed ONE MILLION Dollars (\$1,000,000.00). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

1.2 Manner of Payment: Each Service Order will set forth whether the CITY will pay the CONSULTANT for work performed under such Service Order on a lump sum basis or on a time and material basis. Section 2 of this Exhibit applies to each Service Order where the CITY will pay the CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where the CITY will pay the CONSULTANT on a time and material basis for the work performed.

1.3 Schedule of Charges: Exhibit C-1 of this AGREEMENT, entitled "Schedule of Charges," set forth the CONSULTANT'S charge rates for various personnel as well as the amounts it charges for various special inspections and material tests. Regardless of whether the manner of payment contained in a Service Order is on a lump sum basis or on a time and material basis, compensation shall be determined and based upon the charge rates and charge amounts set forth in the Schedule of Charges. Charge rates will be updated on an annual basis.

Section 2. Lump Sum Payment.

2.1 Lump Sum Amount: The Service Order shall specify the lump sum amount the CITY will pay the CONSULTANT for performing the required work. The lump sum amount compensates the CONSULTANT for all its costs necessary to complete the work, including professional services and reimbursable expenses. CONSULTANT shall complete all work set forth in the Service Order for the lump sum amount.

2.2 Progress Payments: The Service Order may provide for the CITY to pay the lump sum amount by making progress payments. Under such circumstances, the Service Order shall specify appropriate milestones and the amount payable upon successful completion of each milestone. Upon completion of a milestone to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the appropriate progress payment. The CITY will make the

appropriate progress payment to the CONSULTANT within thirty (30) days of the Director's approval of the CONSULTANT's invoice.

2.3 Lump-Sum Payment: If the Service Order does not provide for the CITY to make progress payments, then the CITY shall make a single, lump-sum payment to the CONSULTANT upon completion of all the work to the Director's satisfaction. Upon completion of the work to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the lump-sum amount. The CITY shall pay the lump-sum amount within thirty (30) days of the Director's approval of the CONSULTANT'S invoice.

Section 3. Payment on a Time and Materials Basis.

3.1 Maximum Compensation: The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional and special inspection services, material tests and reimbursable expenses. The CONSULTANT shall complete all work it is required to perform under the Service Order for no more than the specified maximum amount. Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

3.2 Budget: If the Service Order itemizes budget amounts for any phase or category of work, then CONSULTANT shall not exceed such itemized amount without the Director's prior written authorization. The Director may approve, in writing, transfers of budget amounts between any of the phases or categories of work listed in the Service Order, provided the aggregate total compensation does not exceed the maximum compensation.

3.3 Rates: CITY will compensate CONSULTANT at the rates set forth in Exhibit C-1 of this Master Agreement, entitled "Schedule of Charges." Wage rates subject to Prevailing Wage Requirements are subject to revision at the time of issuance of a new Determination and subsequent Determinations for the duration of the AGREEMENT consistent with the provisions of Exhibit "C-1." Rates not subject to Prevailing Wage Requirements are subject to review annually upon request of the CONSULTANT in accordance with the provisions of Exhibit "C-1." The parties must enter into a written amendment to this AGREEMENT to reflect any new rates before such rates become effective. The Director of Planning & Neighborhood Services is authorized to execute such an amendment.

3.4 Reimbursable Expenses: The CITY will reimburse for expenses subject to the following:

Each Service Order will specify the maximum amount of expenses for which the CITY will reimburse the CONSULTANT. The CITY will reimburse expenses and the costs of sub-consultants, at actual cost plus an eight percent (8%) markup, unless a lower markup is provided for in the Exhibit D-1 of this Master

Agreement. Any expense the CONSULTANT incurs beyond the specified amount is at no cost to the CITY.

The following expenses are reimbursable to the extent the CONSULTANT documents to the Director's satisfaction that they were incurred in performing the work required by the Service Order: (a) the cost of mailing, shipping and/or delivery of documents or products to the CITY, (b) the cost of photographing, reproducing and/or copying, (c) the cost of the sub-consultant, provided the Director has preapproved, in writing, the use and cost of the sub-consultant, (d) telephone and fax charges, (e) the rental of any specialized equipment to the extent the Director has preapproved, in writing, the cost of such rental, and (f) any other expenses expressly identified in the service order as reimbursable. No other expenses are reimbursable unless the Director has preapproved, in writing, such expense.

3.5 Travel Time: For Service Orders on a time and materials basis, CITY will pay time for travel to and from the site when appropriate. An estimate of travel time will be included and negotiated with each service order. CITY will provide the CONSULTANT a place to store CONSULTANT's equipment at the project site, if necessary.

3.6 Invoice: Every month the CONSULTANT shall invoice the CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed, the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amounts of payments received to date under the Service Order and the balance of maximum compensation for remaining work on the Service Order.

Section 4. Others.

4.1 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.

EXHIBIT C-1

SCHEDULE OF CHARGES
(CONSULTANT Hourly Rates)

Person	Firm	Hourly Rate
A. Skewes-Cox	Amy Skewes-Cox, AICP	185.00
Wordprocessing	Amy Skewes-Cox, AICP	90.00
Graphics Assistant	Amy Skewes-Cox, AICP	90.00
Natalie Macris	Natalie Macris	115.00
Bruce Abelli-Amen	Baseline	180.00
Todd Taylor	Baseline	130.00
Patrick Sutton	Baseline	130.00
Monika Krupa	Baseline	105.00
Andrew Kluter	TJKM-Project Manager	180.00
Nayan Amin	TJKM-Principal	250.00
Jeffrey Lacap	TJKM-Project Engineer	125.00
Dan Harrison	TJKM-Graphics	110.00
Rosa Johnson	TJKM-Clerical	80.00
James Reyff	Illingworth & Rodkin	185.00
Michael Thill	Illingworth & Rodkin	185.00
Joshua Carmen	Illingworth & Rodkin	155.00
Jared Mc Daniel	Illingworth & Rodkin	135.00
Technician	Illingworth & Rodkin	85.00
Timothy Jones	LSA	95.00
Andrew Pulcheon	LSA	125.00
Kimberly Butt	Interactive Resources	120.00
James Martin	Environmental Collaborative	135.00
Marsha Gale	Environmental Vision	175.00
Charles Cornwall	Environmental Vision	145.00
Christina Kossa	Environmental Vision	92.00
Nana Kirk	Environmental Vision	92.00

EXHIBIT D

INSURANCE

CONTRACTOR, at CONTRACTOR'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

Definition:

For purposes of this contract, the following definition applies: CITY of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the CITY of Milpitas, individually or collectively.

Insurance Required:

CONSULTANT must procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the contract and the results of that work by the CONSULTANT, his agents, representatives, employees or sub-consultants and provide documentation of same prior to commencement of work. The insurance must be maintained for the duration of the contract.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be at least as broad as:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability.
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (X) Professional Liability or Errors & Omissions Liability insurance appropriate to the CONSULTANT's profession.

Minimum Limits of Insurance:

CONSULTANT must maintain limits no less than:

1. **General Liability:** \$1,000,000 per occurrence for bodily injury, personal (Including operations, injury and property damage. If Commercial General products and Liability insurance with a general aggregate limit is completed operations, used, either the general aggregate limit must apply as applicable.) separately to this project/location or the general aggregate limit must be twice the required occurrence limit.

- | | |
|---|--|
| 2. Automobile Liability: | \$1,000,000 per accident for bodily injury and property damage. |
| 3. Workers' Compensation Employer's Liability: | Statutory
\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee |
| 4. Professional Liability or Errors & Omissions Liability: | \$ 500,000 each occurrence
\$1,000,000 policy aggregate |

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions of all consultants and sub-consultants must be declared to and approved by the CITY. At the option of the CITY, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the CITY, its officers, officials, employees and volunteers; or the CONSULTANT will provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The CITY of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the **CONSULTANT's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the CITY, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from

work performed by the Named Insured for the CITY. This provision also applies to the CONSULTANT's Workers' Compensation policy.

4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the CITY. If CONSULTANT's insurer refuses to provide this endorsement, CONSULTANT shall be responsible for providing written notice to the CITY that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

Sub-Consultants:

CONSULTANTs must include all sub-CONSULTANTs as insured under its policies or furnish separate certificates and endorsements for each sub-CONSULTANT. All coverage for sub-CONSULTANTs are subject to all of the requirements included in these specifications.

Absence of Insurance:

if the CONSULTANT allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the CONSULTANT shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONSULTANT's delay and shall not be considered to increase cost to the CITY or increase time in which the Project shall be completed.

CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect, CITY may immediately terminate this Agreement.

EXHIBIT E

SPECIAL PROVISIONS

In the performance of this AGREEMENT:

1. **Prohibition on Discrimination and Preferential Treatment**

CONSULTANT shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. **Compliance Reports.**

If directed by CITY, CONSULTANT shall file, and cause any subcontractor to file, compliance reports with the CITY. Compliance reports shall be in the form and filed at such times as may be designated by the CITY. Compliance reports shall contain such information and be supported by such data or records as may be requested by the CITY to determine whether CONSULTANT or its subcontractor is complying with the nondiscrimination and non-preference provisions of this Agreement.

3. **Failure to Comply With Nondiscrimination Provisions.**

If the CITY determines that the CONSULTANT has not complied with the nondiscrimination or non-preference provisions of this AGREEMENT, the CITY may terminate or suspend this AGREEMENT, in whole or in part.

4. **Subcontracts.**

CONSULTANT shall include provisions of this Agreement in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

5. **Prevailing Wage.** CONSULTANT acknowledges that portions of this contract are a Public Work, subject to the provisions of Section 1771 of the California Labor Code. CONSULTANT shall pay, or cause to be paid, prevailing wages, as set forth in the California Labor Code Section 1770 *et. seq.*, for all labor performed on the Project sites to facilitate the professional services provided under this AGREEMENT, including, but not limited to inspection, surveying, drilling, trenching, and excavation. CONSULTANT shall include in all agreements for such labor, a requirement that the employer provide all workers with written notice that prevailing wages apply.

CONSULTANT shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages as required by the State prevailing wage law. CONSULTANT shall provide to the CITY, at no cost to the CITY, a copy of all such records within ten (10) working days of a request for such records by CITY.

CONSULTANT expressly agrees that the compensation agreed to between the parties includes all payment necessary to meet State prevailing wage law requirements. CONSULTANT shall indemnify the CITY for any claims, costs or expenses which the CITY incurs as a result of CONSULTANT'S failure to pay, or cause to be paid, prevailing wages.

6. **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. **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.

**EXHIBIT F
SERVICE ORDER**

1 CONSULTANT MASTER AGREEMENT

This Service Order is made and entered into by and between the CITY OF MILPITAS, a municipal corporation of the State of California and AMY SKEWES-COX, Sole Proprietorship. CITY and CONSULTANT have entered into a Master Service Agreement dated November 6, 2013 which authorizes the proposed services and compensation as outlined below.

2 SERVICE ORDER

Service Order No: _____ Date: _____

Service Order Compensation Amount: \$ _____

CONSULTANT Firm Name: _____

Address: _____

Contact: _____

Phone/Email: _____

3 PROJECT DESCRIPTION

Project Name: _____

Brief Description of Services: _____

Exhibit A: *Attach Full Scope of Services, Schedule of Performance and Compensation*

4 APPROVALS

CONSULTANT: _____ Date: _____

Assistant CITY Attorney: _____ Date: _____

Director of Planning: _____ Date: _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated, and that funds are available as of this date of signature.

Authorized Signature: _____ Date: _____

