

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

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), and RMC Water and Environment, a California Corporation ("Consultant") as of June 17, 2014.

AGREEMENT

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on February 28, 2017, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

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

- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed Nine Hundred Thousand dollars (\$900,000.00) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

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

which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10) percent shall be retained by the City from each Agreement billing until the completion of the Agreement unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

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

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

2.5 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

2.6 Reimbursable Expenses. Reimbursable expenses are shown on Exhibit B, and shall not exceed Fifteen Thousand Three Hundred and Seventy-eight dollars (\$15,378.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

2.7 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant

for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each

of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

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

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

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

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

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

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

4.4 Requirements for All Policies.

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

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such

deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

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

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

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the

actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

Section 6. STATUS OF CONSULTANT.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1** Immediate cancellation of the Agreement;
 - 8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
 - 8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement

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

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

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in

whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Michael Boitnott who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to Consultant shall be sent to:
- RMC Water and Environment
Steve Bui, Principal-in-Charge
2290, North First Street, Suite 212
San Jose, California 95131
- Any written notice to City shall be sent to:
Jeff Moneda, Public Works Director/City Engineer
455 East Calaveras Boulevard
Milpitas, California 95035
- 10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 Exhibits.** All exhibits and attachments to exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT
RMC Water & Environment

Thomas C Williams, City Manager

Name & Title

Taxpayer Identification Number

94-3295096

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

Corporate Entity Number

C2071660

APPROVED AS TO CONTENT:

Jeff Moneda, Public Works Director/City Engineer

EXHIBIT A

DEMPSEY ROAD UTILITY IMPROVEMENTS PROJECT

SCOPE OF SERVICES FOR THE DEMPSEY ROAD WATER LINE REPLACEMENT, EAST SEGMENT TWO, OF THE SEISMIC WATER LINE “LOS COCHES BACK BONE”, ABEL STREET PIPE LINE EXTENSION, AND DEMPSEY ROAD STORM DRAIN REPLACEMENT

General Descriptions of Projects:

“Dempsey Road/Los Coches East”, City Project No’s. 7118 & 7100

The Dempsey Road Waterline Replacement and Seismic Water Line Back Bone, Segment Two “Los Coches”, Project No’s. 7118 & 7100, are included in the approved City of Milpitas Capital Improvement Program. The City’s objective is to connect Gibraltar and Ayer Pump Stations and work out radially to install a waterline backbone. The City of Milpitas has two water service providers - San Francisco Public Utilities Commission “Hetch Hetchy” (SFPUC) and Santa Clara Valley Water District (SCVWD). The Dempsey waterline segment is served by the existing SFPUC pipe network and the Los Coches line will be served by a new turnout proposed to be constructed by SFPUC on Los Coches Street at the SFPUC transmission line crossing. The City is going to break the project into two design and construction package the “East” and “West” half.

The “East Portion” of the project will include the replacement or installation of several segments. All of the pipe segment along the “east portion” shall be installed to the seismic water line design standard (ductile iron pipe with restraint joints such as TR flex, May 2006 by DSWA, backbone priority 2 segment update). Segment E-1, the replacement of existing 12” waterline on Dempsey Road between Calaveras Boulevard and Yosemite Drive that was installed circa 1950 with a new 16” waterline. Segment E-2, a new 16” waterline crossing under I-680 between Los Coches and Dempsey adjacent and parallel to the existing Los Coches Creek box culvert beneath I-680. Segment E-3, a new 16” waterline from Dempsey to Ayer Pump Station. The proposed alignment would need to connect to all existing services and provide new services to critical facilities along the alignment. See Attachment A for a preliminary proposed alignment.

“Los Coches West” (Work not included in this Agreement, for information only)

The west portion of the project will include the installation of several segments: Segment W-1, a new 16” waterline from segment E-2 termination point on the west side of I-880 to the new SFPUC turnout on Los Coches. Segment W-2, a new 16” waterline from the new SFPUC turnout to Segment One of the S. Milpitas Blvd backbone. Segment W-3, replace the existing 15” waterline on Hillview with a new 16” waterline between Calaveras Blvd. and segment W-1.

“Dempsey Road Storm Drain Replacement”, City Project No. 3709

Along with the replacement of the waterline on Dempsey Road the City is going to install three segments of storm drain lines and two out falls into Los Coches Creek per the 2013 Storm Drain Master Plan. See Attachment B for a preliminary proposed segment alignment and sizing. The proposed alignment would need to connect to existing storm drain curb inlets, existing private property connections, and add new inlets in locations where localized ponding occurs. The project would also install flap gates at the existing outfalls just west of Park Victoria Dr. and Los Coches Creek. See Attachment C for Environmental document associated with the 2013 Storm Drain Master Plan work.

“Abel Street Pipe Line Extension”, City Project No. 7117

The Abel Street waterline work will install 12” C9xx piping rated for the City’s pressure zones to connect three "dead-end" pipes, one on Abel Street and two on Carlo Street per the 2009 Water Master Plan Update. See Attachment D for a preliminary proposed alignment.

Consultant Team for Projects

Through the City’s consultant selection process, CONSULTANT has been selected to provide the design services for the Dempsey Road Water Line Replacement, East Segment Two, of the Seismic Water line “Los Coches East Back Bone” and Abel Street Pipe Line Extension, as described above. CONSULTANT agrees to complete each of the task outlined below in strict accordance with this Agreement and subject to City review and approval.

All existing utility lines being replaced or modified will need to remain in-service up until the replacement lines can be utilized. All appropriate utility bypasses or “high-lines” will need to be developed for this project. The existing lines not selected for removal by the City will need to be decommissioned and properly abandoned. Various encroachment permits, right of entry, environmental permits and easement crossing will need to be acquired prior to installation of the new utility lines. The City wants to implement construction as soon as all right-of-way, easements and permits/approvals can be obtained for the project.

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

Design Team:

Principal, Steve Bui, P.E.

Project Manager, Mike Matson, P.E.

Project Engineer, Jennifer Glynn, P.E.

Project Engineer, Madison Casserly
Hydraulic Modeling, Emmalynne Roy, P.E.
Utility Coordination, Isaac Serrano
Permitting, Katie Cole
Environmental Review, Robin Cort
QA/QC Review, Glenn Hermanson, P.E.

Sub-Consultants:

Jacobs Associates, Geotechnical Engineering
49 Stevenson Street, 3rd Floor
San Francisco, CA 94105

Exaro Technologies Corporation, Utility Potholing
1831 Old Bayshore Hwy.
Burlingame, CA 94010

Cross Land Surveying Inc., Surveying
2210 Mount Pleasant Rd 2210
San Jose, CA 95148

Cornerstone Earth Group, Environmental Testing
1259 Oakmead Parkway
Sunnyvale, CA 94085

JDH Corrosion Consultants, Inc., Cathodic Protection
1100 Willow Pass Ct.
Concord, CA 94520

HT Harvey & Associates, Environmental Survey
983 University Avenue, Building D
Los Gatos, CA 95032

TJC & Associates, Inc., Structural
3206 Luyung Drive
Rancho Cordova, CA 95742-6830

Task 1 - Concept Design:

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

DELIVERABLE:

- Attend one (1) meeting in person to discuss concept design and scope. Prepare meeting preparation materials and meeting summary memorandum (2 hardcopies and one .pdf file via email).
2. See Task 2 for assessments and investigations.
 3. Prepare preliminary design plans that include each of the following:
 - a. Preliminary layout of improvements in compliance with all applicable codes and regulations as adopted by the City of Milpitas.
 - b. Preliminary construction estimate.
 - c. Preliminary construction schedule.
 - d. Environmental surveys.
 - e. Proposed easements/right-of-way that would need to be obtained, including temporary construction easements.
 - f. Proposed locations for soil boring and environmental soil testing sites.
 - g. Sketches of/images/cut sheets of proposed materials.
 - h. Prepare outline of technical specification.
 - i. Evaluate to determine if the improvement project would fall outside the requirements of the Mitigated Negative Declaration for the storm drainage work and a categorical exemption for the remaining work.
 - j. The use of cost effective design, materials that require minimal maintenance.
 - k. Identify permits and project approvals that will need to be obtained.

DELIVERABLE:

- Preliminary design plans and narrative memorandum for City review and comment (2 hardcopies and one .pdf file via email).
4. Using program elements and Task 2 findings from the site investigation and information gathering, prepare a concept plan for the improvements. The concept plan shall address regulatory compliant and identified master plan improvements then the balance of the improvements budget can be applied toward betterments.

DELIVERABLE:

- One (1) Concept Plan document for City review and approval (2 hardcopies and one .pdf file via email).
5. CONSULTANT shall meet with CITY staff to review issues associated with each of the proposed concepts and identify a preferred alternate.

DELIVERABLE:

- Attend one (1) meeting in person to review concept plans. Prepare meeting agenda and summary memorandum (2 hardcopies and one .pdf file via email).

6. a. CONSULTANT shall develop final plan within the City's Not to Exceed construction budget of \$4,500,000 for the Dempsey Road Water Line Replacement, Segment Two, of the Seismic Water line "Dempsey Road/Los Coches Back Bone East" and Abel Street Pipe Line Extension.

b. CONSULTANT shall develop final plan within the City's Not to Exceed construction budget of \$1,450,000 for the Dempsey Road Storm Drain Replacement. The City has not secured the funds for the construction of the Dempsey Road Storm Drain Replacement and will determine if the project will be awarded at the time of Project Award.

DELIVERABLE:

- Final Concept Plan incorporating all City comments (2 hardcopies and one .pdf file via email).

7. CONSULTANT shall, with the CITY'S input, develop a project schedule for the Design and Construction phases of the Project. CITY wishes to put the project out to bid for construction in once all permits and right-of-way are obtained.

DELIVERABLE:

- Project Schedule for design and construction phases (on MS Project 2007 file and one .pdf file via email).

Task 2: Field and Document Investigation for Design

1. Condition assessment and evaluation of the utility lines at the connection points between old and new work through enlarged potholes at proposed connection locations. The new work shall be tie-in into the existing system at a point suitable for continued operation for a minimum 10 year period.

2. Field investigation and data collection of the existing conditions, all existing utility lines, and future water and storm drain line alignment for the Dempsey Road Water Line Replacement, East Segment Two, of the Seismic Water line "Los Coches Back Bone", Dempsey Road Storm Drain Replacement, and Abel Street Pipe Line Extension shall also include review of as-builts, and other information available for the project site.

a. CITY will provide, but cannot guarantee the accuracy of:

i. Available as-built plans in hard copy.

b. CONSULTANT to perform:

i. Field survey for

1. Size and location of improvements
2. Size and location of existing structures
3. Size and location of existing utilities
4. Soil borings for determining soil conditions

5. Soil sampling to determine proper disposal of soil
 6. Soil sampling for determining cathodic protection system
 7. Location of existing right-of-way and easements
 8. Generating temporary construction easements
 9. Biological resource surveys identified in the Storm Drain Master Plan Mitigation Monitoring and Reporting Plan.
 10. Other information that is necessary to design the improvements.
- ii. Preparation of additional As-built CADD drawings not provided by the City must be approved in writing prior to proceeding with the work.
- c. CONSULTANT shall verify locations and inverts of existing underground piping related to the Dempsey Road Water Line Replacement, East Segment Two, of the Seismic Water line “Los Coches Back Bone” and Abel Street Pipe Line Extension, Dempsey Road Storm Drain Replacement, and the “as-built” plans provided by the City.
- d. CONSULTANT shall field verify all known utility crossings of the proposed waterline and storm drain alignments by potholing to determine the size and location of the utility. All potholes shall be properly backfilling and the surfacing shall be restored by the Consultant.
- e. CONSULTANT shall perform up to 85 potholes. Any additional underground utility locating required shall be performed upon receipt of written authorization from the City.
4. Based on the findings of the field investigation and condition assessment additional design scope may be necessary including; structural engineering. This additional design scope must be authorized by the City in writing prior to proceeding with the work.

Task 2 Deliverables:

- Memorandum of condition assessment and evaluation to the City.
- Backfill and surface restoration at pot hole locations.
- Field survey report.
- Pothole report.
- Memorandum of revised design scope as required based on condition assessment.

Task 3: Final Design

Objective:

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

1. Prepare and submit construction plans, specifications and estimates (submittals 50%, 98%, and final design 100%). The 98% CITY's incorporate submittal shall be used to obtain all necessary agency permits. The 100% design package shall incorporate comments for obtaining necessary agency permits and CITY comments and will be used for bidding the work. For each phase of design development, the CONSULTANT shall respond to and incorporate CITY's comments. CONSULTANT shall schedule a minimum of four (4) weeks for City review of each submittal. The 50% and 98% submittals shall include one (1) complete hard copy sets of plans, specifications and calculations. The 100% submittal shall include three (3) complete hard copy sets of plans, specifications, and calculations stamped by a California licensed professional engineer. Submittals shall also be submitted on CD or DVD in AutoCAD 2013 or later version and PDF formats. Specifications shall be in MS Word 2007 format, and cost estimate shall be in MS Excel 2007.

DELIVERABLE:

- Fifty percent (50%) Construction Plans (full size on bond paper), Specifications, and Estimates for City review and comment.
 - Ninety-Eight percent (98%) Construction Plans (full size on bond paper), Specifications, and Estimates for City review and comment.
 - Ninety-Eight percent (98%) Construction Plans for Permitting (full size on bond paper) Specifications, and Estimates with City comments incorporated for submittal to outside agencies for permits.
 - One Hundred percent (100%) Construction Plans (full size on bond paper), Specifications, and Estimates incorporating City and Agency permitting comments.
 - All documents necessary for the City to obtain right-of-entry agreements, acquire right-of-way and easements or similar approvals to construct and maintain the proposed water and storm drain lines. Fee estimate assumes up to three plats and associated legal descriptions.
 - Obtain all required permits to construct the improvements. CITY will pay associated fees. Currently the permits identified for this scope will be required from: Caltrans, OSHA, California Department of Fish & Wildlife, Santa Clara Valley Water District, US Army Corps of Engineers, California Department of Public Health, and regulatory discharge permits for water used or encountered during construction.
2. CONSULTANT shall attend Team Meeting: Present 50%, 98%, 100% Construction Documents package to CITY for review.

DELIVERABLE:

- Attend team meetings in person to present 50%, 98%, and 100% Plans, Specifications and estimates, as requested by City. Prepare meeting agendas and summary memoranda (.pdf format via email).

GENERAL REQUIREMENTS

1. CONSULTANT shall coordinate and manage sub-consultants throughout the term of the Agreement.
2. Plan sheet size shall be 24x36, plans shall be at reasonable scales, but not smaller than 1"=40' for site, and Civil. Details shall be of a minimum size to easily read and understand the information that is being conveyed.
3. CONSULTANT shall be responsible for meeting the requirements of the CITY Standards, Outside Agencies, Local, State, and Federal codes and regulations, and CEQA submittal and approval requirements.
4. Where applicable, the CONSULTANT shall design the Project in compliance with latest CITY, State, and Federal Storm Water Pollution Prevention, Stormwater Treatment Requirements "C3" and Erosion Control guidelines. CONSULTANT shall provide Erosion Control Plan details, guidelines and technical specification section for the Contractor to use in preparing the project Storm Water Pollution Prevention Plan "SWPPP" and compliance with the State Notice of Intent "NOI" requirements if the threshold of disturbed area is exceeded.
5. CONSULTANT shall prepare the Project Plans using the CITY's Standard Title Block to be located at the bottom right of each Plan sheet (CITY to provide title block in AutoCAD).
6. Project Specifications shall be prepared using the CITY's standard front end template (CITY to provide in MS Word). CITY also has several Technical Specification Sections, which are also standard that may be used on the project. If CONSULTANT uses CITY provided technical sections the CONSULTANT shall be solely responsible and accountable for all design of the project. All other technical specification sections shall be prepared by the CONSULTANT. The specifications shall be created in conformance with the current industry standard, Construction Specification Institute "CSI" 16 Division format. The technical specifications shall be coordinated with the plans, CITY Standard front end template, and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines. The construction documents shall conform to the applicable: Current California Codes as adopted by the City of Milpitas, and all other applicable local, State and Federal codes, regulations, permit requirements, and conditions necessary for issuance of the necessary permits for construction. The specifications shall include measurement and payment wording. CONSULTANT shall coordinate the inclusion of the technical specifications into the front-end specifications as one packet. CONSULTANT shall provide estimated construction costs in the form of the contractor bid proposal format. Unit cost items shall be used whenever possible.

The construction schedule shall be specified in working days or calendar days as approved by CITY.

7. Where applicable, CONSULTANT shall assist the CITY in coordination with utility companies including submittal of all necessary service applications. CONSULTANT shall provide all necessary information requested by utility companies. CONSULTANT shall incorporate utility company comments into the design. CONSULTANT shall incorporate utility company review and approval times into the overall project schedule.
8. Where applicable, CONSULTANT shall obtain all necessary outside agency permits/approvals/clearances on behalf of the CITY in order to construct the improvements, CITY will pay all applicable permit/approval/clearances fees. CONSULTANT shall provide all necessary information requested by outside permitting agencies and generate the necessary documents to obtain the required project permits. CONSULTANT shall incorporate outside permitting agencies comments into the design. CONSULTANT shall incorporate outside agency review and approval times into the overall project schedule.
9. Where applicable, CONSULTANT shall perform all necessary environmental documentation and surveys required to comply with the California Environmental Quality Act (CEQA) on behalf of the CITY in order to construct the improvements. CONSULTANT shall provide necessary information requested by outside parties and the CITY. CONSULTANT shall incorporate CITY and relevant parties' comments into the design. CONSULTANT shall incorporate time to obtain environmental permits, clearance review and approvals into the overall project schedule.
10. Where applicable, CONSULTANT shall assist the CITY in obtaining all necessary easements and right-of-way in order to construct the improvements. CONSULTANT shall provide all necessary documentation and plans to obtain the respective easement or right-of-way. CONSULTANT shall incorporate time to obtain easements or right-of-way into the overall project schedule. CITY shall be responsible for all easement and right-of-way negotiations and acquisitions.
11. CONSULTANT shall install Temporary Bench Mark(s) (TBM) that can be used for both the design and construction portions of the project. The TBM shall be referenced on the design plans and tied to the location(s) of the new improvements.
12. Final plans ready for bidding shall be submitted wet signed/stamped hard copy on bond paper and on compact disk (CD) in AutoCAD 2013 or later version and PDF formats.

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

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

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

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

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

DELIVERABLE:

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

Task 5: Bidding Support Services:

CITY will be responsible for advertisement for bid of the project. CONSULTANT shall assist CITY during bid solicitation process. CONSULTANT shall provide bid phase services, as requested by the CITY through award of the construction contract including the following: response to bidders' inquiries, preparation of addenda, attend and assist at two (2) pre-bid meetings, review and evaluation of bids. Upon completion of bidding, CONSULTANT shall prepare a "Conformed" package of plans and specifications revised to incorporate all addenda ready to issue for contract award and construction. CONSULTANT shall submit one (1) signed conformed set of contract documents hard copy on bond paper and one electronic copy on CD or DVD in AutoCAD 2013 or later version, MS Word and PDF formats.

DELIVERABLE:

- Answer bidder questions as requested by the CITY during the bid process
- Attend two (2) Pre-bid meetings in person

- Assist and draft addenda/response to bidder inquiries, if needed
- Assist in bid evaluation as requested by CITY
- Conformed plans & specifications (One signed hard copy set wet signed/stamped by a California licensed professional on bond paper, One set on CD or DVD in AutoCAD 2013 or later version, MS Word 2007, and PDF formats)

Task 6: Construction Administration Support:

1. CONSULTANT shall provide limited Construction observation services and project administration duties commencing with the award of the construction contract and shall terminate at the conclusion of the warranty/guarantee periods for the Contractor's work. CONSULTANT shall be responsible for the construction observation and managing of the trenchless technology crossing in the project. CONSULTANT services during construction consist of activities requested by the CITY. The CITY shall act as the project construction manager during construction.
2. CONSULTANT shall advise and consult with the CITY in all matters associated with CITY requests for support and shall promptly submit its observations, recommendations, and reports to the CITY.

DELIVERABLE:

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

DELIVERABLE:

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

sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the construction contractor's rights and responsibilities under the contract with City. The CONSULTANT shall prepare observation reports on the days that the CONSULTANT is on site. The CONSULTANT's level of effort assumes that site visits will be combined with construction meetings to limit the man-hours associated with site visits. Material testing such as: compaction testing, concrete testing, pavement testing, will be provided by a Third Party Special Inspection Company hired by the City.

DELIVERABLE:

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

DELIVERABLE:

- Attend construction meetings in person as requested by the City.
7. To the extent of its involvement during construction, CONSULTANT shall keep the CITY informed of its observations of the progress of the Project. CONSULTANT shall have an elevated presence during construction for shaft excavation and tunneling activities to provide an appropriate level of observation of contractor's work by qualified individuals from CONSULTANT's geotechnical engineering subconsultant. CONSULTANT will work in close coordination with CITY's construction manager regarding observation and reporting of tunneling observations. The level of effort for tunneling observations is limited to the budgeted fee under this subtask unless otherwise authorized by the City in writing.

DELIVERABLE:

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

DELIVERABLE:

- Report in writing any deviations from the project schedule.

9. As requested by and forwarded from the CITY, CONSULTANT shall review and respond to construction contractor's Requests for Information (RFI's) and submittals including shop drawings, product data, and samples, for conformance with the design concept expressed in the Project construction contract. CONSULTANT shall coordinate its review and response to these documents with the CITY and the construction contractor as needed to allow for work to proceed, and be cognizant of the construction contractor's progress and schedule. In this regard, CONSULTANT shall work in good faith with the contractor and the CITY to prioritize the processing of critical path RFI's and submittals and other contractor submitted documents as outlined in this scope of work. CONSULTANT's review and response to RFI's and submittals shall be done in a timely and expeditious manner. So long as construction contractor fully complies with the Project's approved submittal schedule, CONSULTANT shall review and respond to required submittals with such reasonable promptness as to cause no delay in the work, while allowing sufficient time to provide adequate review. Generally, such review shall take no more than four (4) working days for RFIs and ten (10) calendar days for all other submittals, so long as such submittals are timely and complete. CONSULTANT shall review submittals for completeness and issue rejections of submittals on incompleteness grounds as soon as professionally possible, but in no event later than five (5) working days from receipt of submittal from CITY. If additional time is required to review and respond to RFI's or submittals due to circumstances beyond CONSULTANT's reasonable control, CONSULTANT shall notify the CITY in writing of the grounds for such delay and request additional review and processing time from the CITY, the approval of which shall not be unreasonably withheld, but such determination shall be based upon the critical path of the subject document and the overall impact to the construction contractor's progress. In such cases, CONSULTANT shall make good faith efforts to resolve or remedy the delay in an expeditious manner.

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

DELIVERABLE:

- Review submittal/shop drawings and provide comments.
 - Review and response to RFI's.
10. CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor and provided to the CONSULTANT by the CITY in accordance with the requirements of the construction contract. The CITY shall maintain a log of submittals submitted from the Contractor to the CITY; the CONSULTANT shall maintain a log of submittals transmitted from the CITY to the CONSULTANT.

DELIVERABLE:

- Maintain record of and copies of contractor submittals.

11. CONSULTANT shall review requests by the CITY for changes in the work, including adjustments to the contract price or time of completion. CONSULTANT shall provide a recommendation to the CITY in writing.
- a. CONSULTANT shall review and respond to Contractor-submitted Potential Change Order within five (5) working days of its receipt.
 - b. CONSULTANT shall assist the CITY in the preparation of Change Orders and Construction Change Directives with appropriate supporting documentation and data as necessary, for the CITY's approval and execution in accordance with the contract documents. Professional services for researching and preparing Change Orders or Construction Change Directives to correct errors and omissions caused by CONSULTANT shall be provided at no additional cost to the CITY.
 - c. CONSULTANT shall identify causes for Change Orders to the CITY in writing for CITY's review.
 - d. CONSULTANT shall maintain all records relative to changes in the work.
 - e. CONSULTANT shall be responsible for those costs associated with any and all Change Orders and/or delays to the extent caused by CONSULTANT's negligent, omission, intentional, or reckless errors.

DELIVERABLE:

- Draft Change Orders and Construction Change Directives, as requested by the City.

12. CONSULTANT may, after receiving approval from the CITY, reject work that does not conform to the contract documents. Whenever CONSULTANT considers it necessary or advisable for implementation of the intent of the contract documents, CONSULTANT will notify the CITY when Consultant feels additional inspection or testing of the work in accordance with the provisions of the contract documents is necessary.

DELIVERABLE:

- Notify City when additional testing and/or inspection are necessary.

13. CONSULTANT shall review reports, summaries, instruction books, operational manuals, warranties, and other construction contractor provided documents to determine in general, whether or not the construction contractor is in compliance with the contract documents.

DELIVERABLE:

- Review contractor provided reports, manuals, warranties and other documents.

14. As directed by the CITY, CONSULTANT shall assist the CITY in fulfilling the legal requirements and mandates of third-party regulatory agencies.

DELIVERABLE:

- Assist City in fulfilling legal requirements.

15. CONSULTANT's certification for payment shall constitute a representation to the CITY, based on the CONSULTANT's evaluation of the work and on the data comprising the Contractor's Application for Payment, that, to the best of the CONSULTANT's knowledge, information and belief, based on its observations of the work, the work has progressed to the point indicated and that the quality of the work is in accordance with the construction contract documents. The foregoing representations are subject (1) to an evaluation of the work for conformance with the construction contract documents upon substantial completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the construction contract documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

DELIVERABLE:

- Review construction contractor progress payments.

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

DELIVERABLE:

- Respond to City questions.

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

DELIVERABLE:

- Generate Engineering Supplemental Instruction (ESI), as necessary.

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

DELIVERABLE:

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

DELIVERABLE:

- Prepare a project punch list and attend the punch list walk.
- Attend one post punch list walk to verify that items on the punch list have been corrected, and issue a follow up punch list of any outstanding items.

Task 7: Record Documents and Project Closeout

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

DELIVERABLE:

- Review and provide comments on operation and maintenance and warranties manuals.
2. CONSULTANT shall maintain up to date Record Drawings throughout project construction. Prior to acceptance of the Project by the City, CONSULTANT shall review for accuracy and completeness the Contractor's as-built drawings and specifications, and shall return them for Contractor revision if they are not accurate and complete. CONSULTANT shall incorporate all changes shown on the Contractor's As-Built Drawings, executed RFI's, submittals, and Contract Change Orders from the Conformed set into a final Record Drawing set. CONSULTANT shall also draft and initial the official Record Drawings and submit both a hard copy on Mylar and an electronic copy in AutoCAD 2013 and GIS shape file format, PDF and TIF on digital video disc (DVD) to the CITY within 25 days of receipt of completed Contractor red line drawings. CONSULTANT to provide the CITY a hardcopy check set of the As-Built Drawings for review prior to printing the Mylar set.

DELIVERABLE:

- Hard copy check set of the record drawings for review by CITY prior to printing the Mylar set.
- Record drawings (1 hard copy check set, 1 hard copy on Mylar, and 1 electronic copy on DVD in AutoCAD 2013 or later version, PDF and TIF formats)

3. Prior to the expiration of each of the Contractor's warranties and guarantees, CONSULTANT shall perform a careful review of the work subject to each warranty and guarantee. CONSULTANT shall immediately report discovered defective materials or workmanship to the CITY so that the CITY may make timely demand to the Contractor to repair the defects.

DELIVERABLE:

- Review and report any deficiencies prior to the expiration of the Contractor's warranties and/or guarantees.
4. Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

DELIVERABLE:

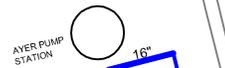
- Attend meeting in person as requested by City.

Task 8: Additional Services

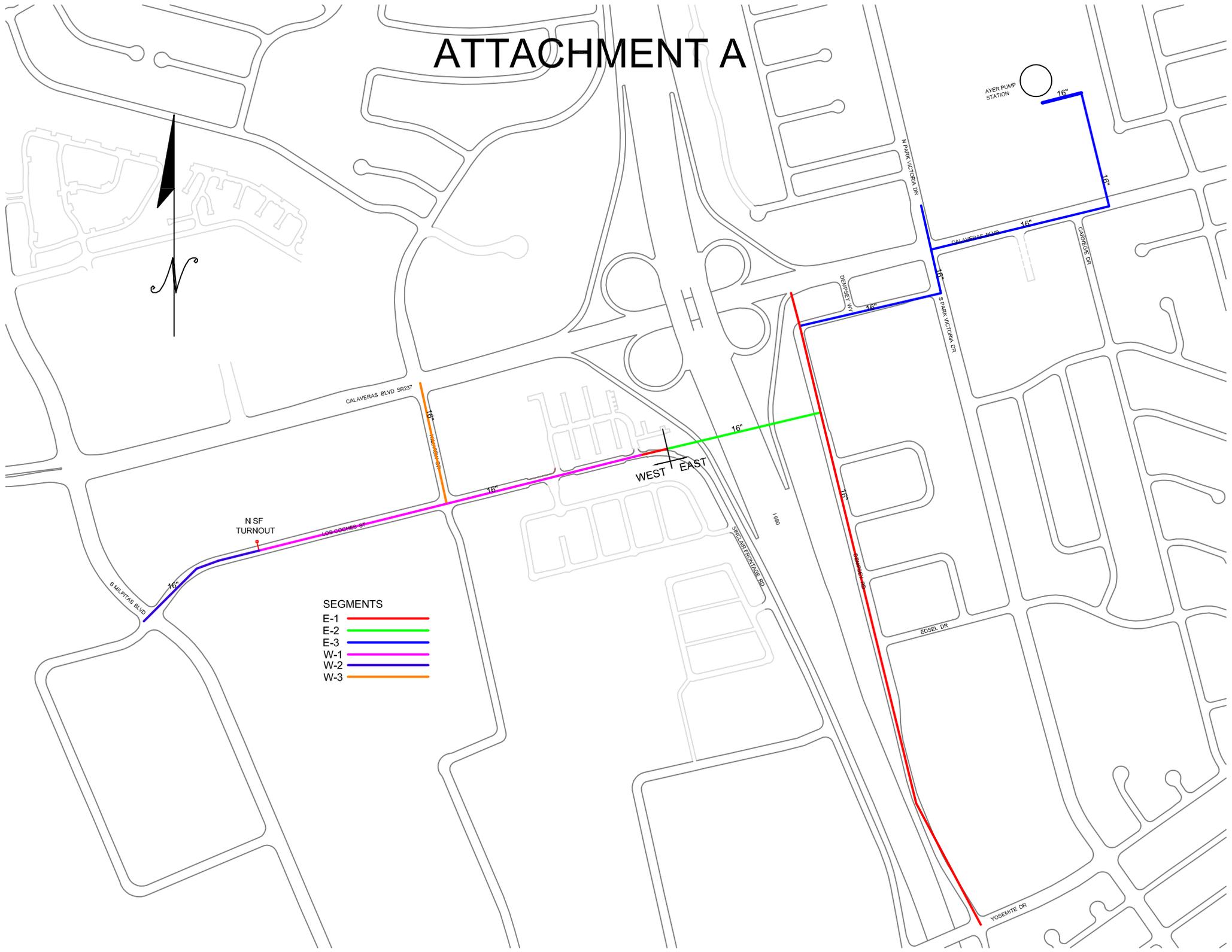
1. CITY will provide written direction and a budget for any additional service to be performed. Written authorization must be obtained from the CITY prior to the CONSULTANT beginning additional services. The CITY will not be responsible for additional work that the CONSULTANT performs prior to receiving written authorization.

EXHIBIT C
INSURANCE DOCUMENTS

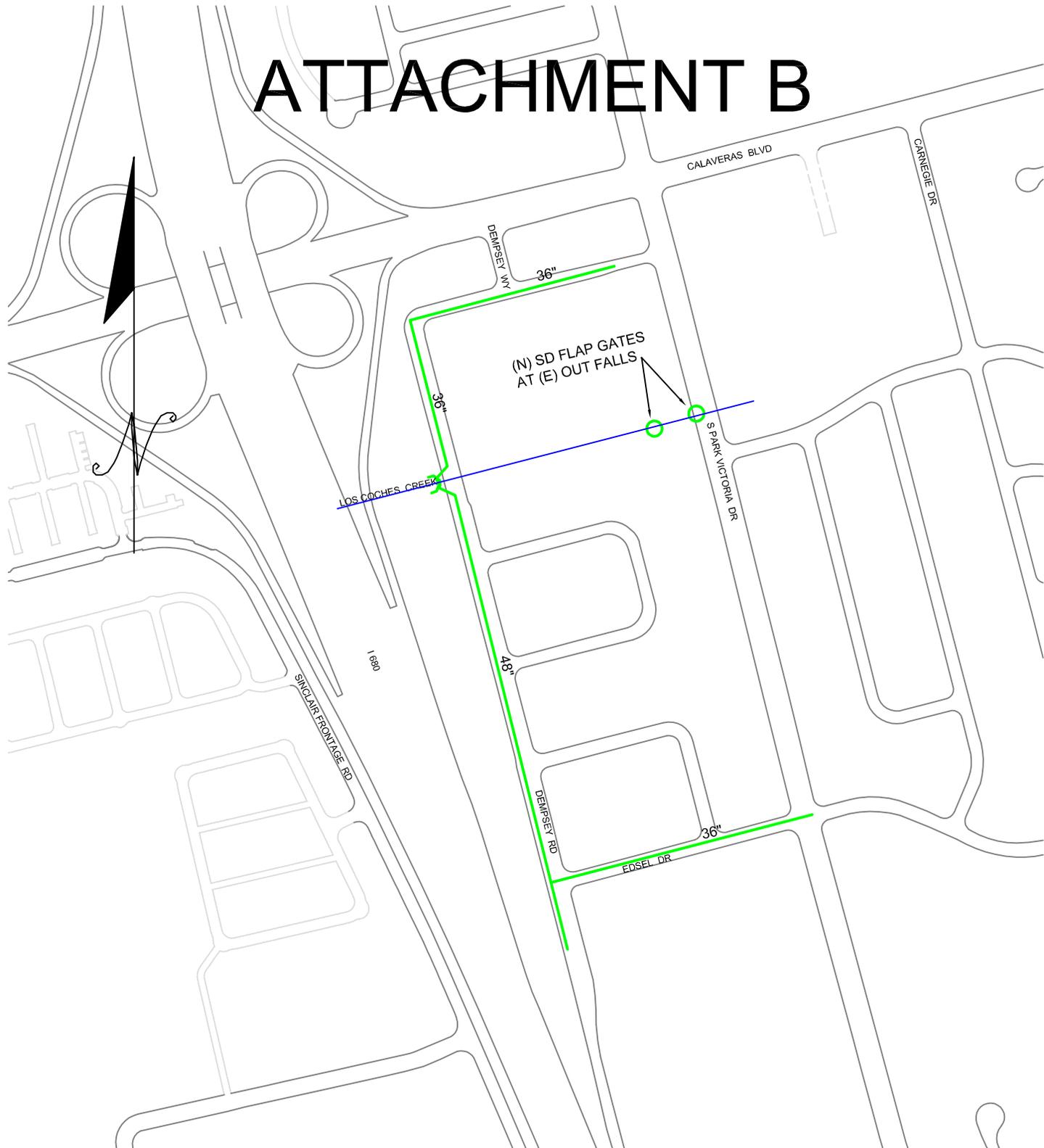
ATTACHMENT A



- SEGMENTS
- E-1 
 - E-2 
 - E-3 
 - W-1 
 - W-2 
 - W-3 



ATTACHMENT B



ATTACHMENT C

RESOLUTION NO. 8309

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADOPTING THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION FOR THE 2013 STORM DRAIN MASTER PLAN AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND APPROVING THE 2013 STORM DRAIN MASTER PLAN

WHEREAS, the City of Milpitas ("City") proposes to approve and implement the 2013 Storm Drain Master Plan ("Project") which defines the storm drain system improvements necessary to accommodate the City's projected build-out based on the City's General Plan, and other land use changes throughout the City; and

WHEREAS, the Planning Division completed an environmental assessment and prepared an Initial Study ("IS") for the Project in accordance with the California Environmental Quality Act ("CEQA") and the Initial Study/Mitigation Negative Declaration concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce the significant effects to less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environment effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures during project implementation; and

WHEREAS, the City is the lead agency on the Project, and the City Council is the decision-making body for the proposed Project; and

WHEREAS, pursuant to the CEQA, a Notice of Intent ("NOI") dated September 9, 2013 was circulated (also identified as State Clearing House No 2013092017) for review by public agencies and interested parties; and

WHEREAS, the NOI to adopt an Initial Study/Mitigated Negative Declaration was circulated for the required 30-day public review and comment period, from September 9, 2013 to October 8, 2013; and

WHEREAS, City staff reviewed all comments received on the proposed Initial Study/Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program ("MMRP") has been prepared to ensure monitoring and implementation of the mitigation measures set forth in Exhibit A; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related MMRP for the Project and intends to take actions on the Project in compliance with CEQA and State and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and the MMRP for the Project are, by this reference, incorporated into this Resolution as if fully set forth herein; and

WHEREAS, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code; and

WHEREAS, on November 5, 2013, the City Council held a properly noticed public hearing to consider adoption of the Initial Study/Mitigated Negative Declaration and approval of the Project.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The following findings are made and directions given:
 - A. That the Initial Study/Mitigated Negative Declaration of the Storm Drain Master Plan has been completed in compliance with CEQA and the CEQA Guidelines.
 - B. That the Initial Study/Mitigated Negative Declaration for the 2013 Storm Drain Master Plan was presented to the City Council, which reviewed and considered the information contained therein prior to approving the Project.
 - C. That the Initial Study/Mitigated Negative Declaration of the Storm Drain Master Plan reflects the City's independent judgment and analysis of the potential for environmental effects of the Project.
 - D. That the custodian of the documents and other materials which constitute the record of proceedings for the Project is the City's Public Works Director, located at City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035.
3. The City Council adopts the Initial Study/Mitigated Negative Declaration of the Storm Drain Master Plan and the Mitigation Monitoring and Reporting Program. A copy of the Mitigation Monitoring and Reporting Program is attached hereto as Exhibit A.
4. The City Council hereby approves the 2013 Storm Drain Master Plan dated July 2013 on file with the City's Public Works Director, located at City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035. The 2013 Storm Drain Master Plan is, by this reference, incorporated into this Resolution as if fully set forth herein.

PASSED AND ADOPTED this 5th day of November, 2013, by the following vote:

AYES: (5) Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez, and Montano
NOES: (0) None
ABSENT: (0) None
ABSTAIN: (0) None

ATTEST:


Mary Lavelle, City Clerk

APPROVED:


Jose S. Esteves, Mayor

APPROVED AS TO FORM:

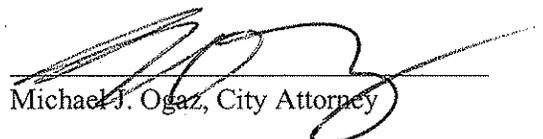

Michael J. Ogaz, City Attorney

Exhibit A

Mitigation Monitoring and

Reporting Program

for the

City of Milpitas

Milpitas Storm Drain Master Plan

**MITIGATION MONITORING AND REPORTING PROGRAM
CITY OF MILPITAS STORM DRAIN MASTER PLAN**

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
AIR QUALITY			
<p>Standard Measure: Water all active construction areas (i.e., all paved access roads, parking areas, and staging areas) at least twice daily and more often during windy periods to prevent visible dust from leaving the site and being carried onto adjacent public streets. Water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality. Active areas adjacent to existing land uses shall be kept damp at all times or shall be treated with non-toxic stabilizers or dust palliatives.</p>	During all phases of construction	Contractor	City of Milpitas Department of Public Works
<p>Standard Measure: Notify residents in the vicinity that could be affected by project grading sufficiently prior to construction activities. A construction monitor will be appointed to respond to questions and complaints and will take corrective action within 48 hours.</p>	Prior to construction	Contractor	City of Milpitas Department of Public Works
<p>Standard Measure: Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two (2) feet of freeboard</p>	During all phases of construction	Contractor	City of Milpitas Department of Public Works
<p>Standard Measure: Apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites, and inactivate construction areas (previously graded areas inactive for 10 days or more).</p>	During all phases of construction	Contractor	City of Milpitas Department of Public Works

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>Standard Measure: Enclose, cover, and/or water at least twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) to prevent visible dust from leaving the site.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>Standard Measure: Install sandbags or other erosion control measures to prevent silt runoff to public roadways.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>Standard Measure: Replant vegetation in disturbed areas as quickly as possible.</p>	<p>After construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
BIOLOGICAL RESOURCES			
<p>MM BIO-1.1: The project will be subject to individual biological resource surveys completed by qualified biologists at each debris basin location to determine the presence of special status species and/or habitat and potential impacts. If significant biological resource impacts are identified, the biological resource surveys will include mitigation measures that shall be implemented to reduce these impacts, as necessary.</p>	<p>Prior to construction at debris basin locations</p>	<p>Qualified biologist</p>	<p>City of Milpitas Department of Public Works</p>
<p>MM BIO-2.1: Once the proposed outfall improvements are identified, the project will be subject to individual biological resource surveys completed by qualified biologists at each outfall location to determine the presence of special status species and/or habitat and potential impacts. If significant biological resource impacts are identified, the biological resource surveys will include mitigation measures that shall be implemented to reduce these impacts, as necessary. Mitigation</p>	<p>Prior to construction of outfall improvements</p>	<p>Qualified biologist</p>	<p>City of Milpitas Department of Public Works</p>

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>measures could include at least the following:</p> <ul style="list-style-type: none"> • To minimize impacts to aquatic species, construction within the channels would be restricted to the dry season. • No construction-related or earthen material will be allowed to enter into or be placed where it may be washed by rainfall or runoff into the channels. • To protect water quality in the channels, the project would conform to the California Stormwater Quality Association's Stormwater Best Management Practice (BMP) Handbook for New and Redevelopment. Implementation of the water quality protection BMPs, including installation of silt fencing between the project and the creek, would prevent adverse impacts to water quality in the creek and minimize potential impacts to aquatic species. • Regulatory agency permits may also be required for projects within the creek channel. Agencies with potential regulatory authority include ACOE, RWQCB, CDFW, and the SCVWD. All of the conditions of the regulatory permits shall be implemented as part of the project. <p>MM BIO-3.1: Construction activities shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February through August.</p>			
	During all phases of construction	Contractor	City of Milpitas Department of Public Works

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>MM BIO-3.2: If it is not possible to schedule construction between September and January, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the CDFW shall be notified of the survey results prior to any ground disturbing activity. Avoidance measures will be developed through consultation with CDFW on a case-by-case basis. These could include construction buffer areas or seasonal avoidance.</p>	<p>Prior to construction</p>	<p>Qualified ornithologist</p>	<p>City of Milpitas Department of Public Works</p>
<p>Standard Measure: Protect/Preserve Heritage Trees During Construction. The City shall require that a project's site design reflect every reasonable effort to preserve existing trees, including the development of conditions to protect heritage trees during construction. Heritage trees shall be trimmed, pruned, or removed only when it is demonstrated that preservation of these trees would result in an unreasonable solution for the proposed use or where a condition of hazard or danger of disease exists.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>Standard Measure: Inventory any Trees to be Removed prior to Construction. Prior to implementing the improvements, the number of ordinance-size trees that would be removed shall be evaluated on the basis of species, size, condition, location, and heritage tree criteria.</p>	<p>Prior to construction</p>	<p>Arborist or Landscape Architect</p>	<p>City of Milpitas Department of Public Works</p>

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>Condition and location value of trees shall be determined by an arborist or landscape architect.</p>			
<p>Standard Measure: <i>Replace with New Trees.</i> If trees must be removed, they shall be replaced with new trees. The replacement tree size shall be determined in accordance with the City Code Title X Streets and Sidewalks, Chapter 2 Tree Maintenance and Protection, Section 9 Replacement or Compensation.</p>	<p>After construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>CULTURAL RESOURCES</p>			
<p>MM CUL 1.1: In the event of the inadvertent exposure of prehistoric or historic cultural resources during construction, all work within 25 feet of the discovery shall be stopped to allow for the identification and evaluation of the significance of the cultural materials by a qualified archaeologist meeting the Secretary of the Interior's standards (CEQA Guideline 15064.5(f)). If the cultural materials are determined to be significant, a qualified archaeologist shall develop an appropriate treatment plan in consultation with the City's Environmental Planner to mitigate impacts to materials to a less than significant level. The plan could include avoidance and preservation measures to preserve the materials in place; scientific collection and analysis; preparation of a professional report in accordance with current professional standards; and/or, professional museum curation of collected cultural materials and resource documentation.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>

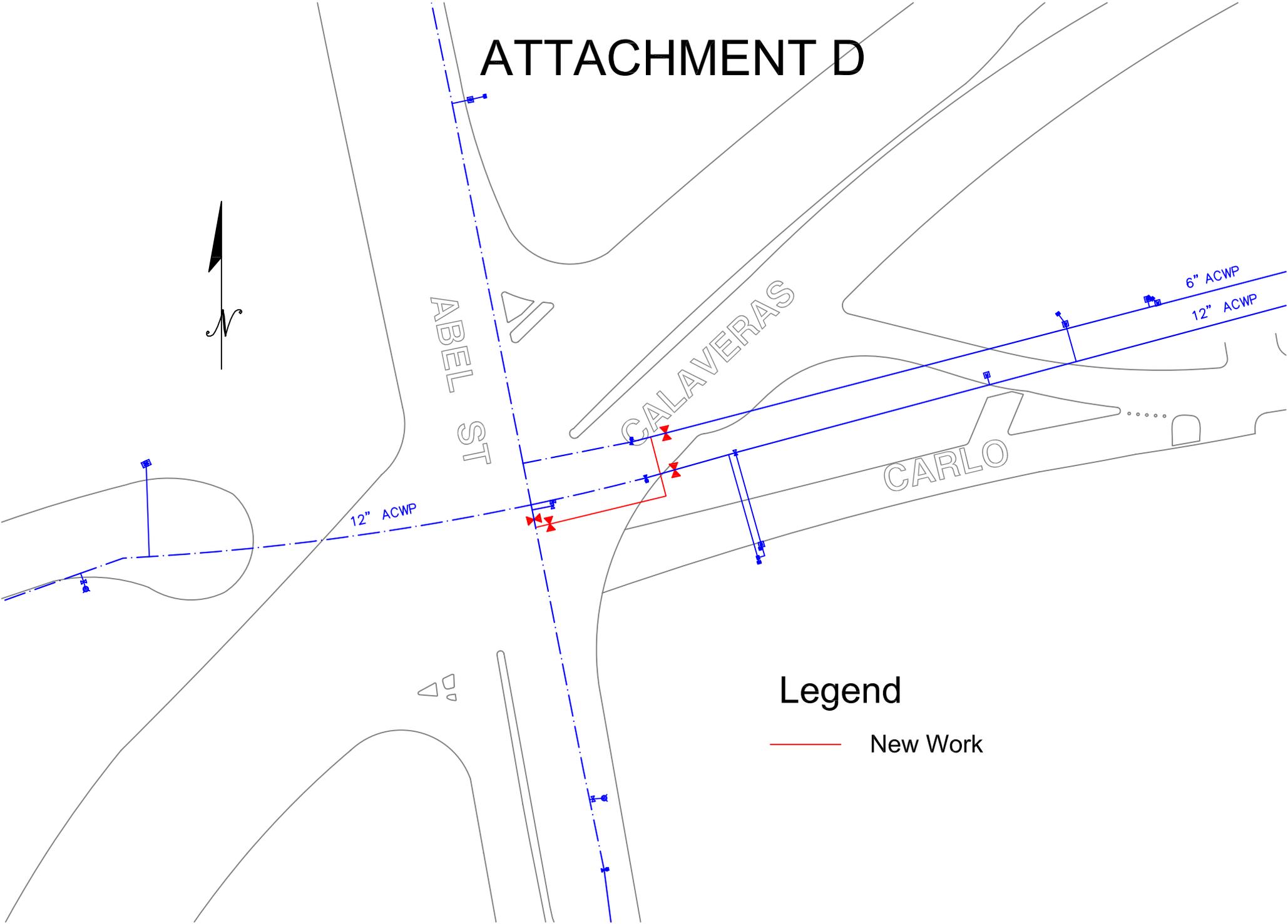
Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>MM CUL 1.2: The treatment of human remains and associated or unassociated funerary objects discovered during any soil-disturbing activity within the project area shall comply with applicable State laws. Pursuant to Section 7050.5 of the California Health and Safety Code, and California Public Resources Code (PRC) Section 5097.94, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Medical Examiner shall be immediately notified and shall make a determination as to whether the remains are Native American.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>In the event the coroner determines that the human remains are Native American, notification of the Native American Heritage Commission (NAHC) is required, who shall appoint a Most Likely Descendant (MLD) (PRC Section 5097.98). The archaeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. California Public Resources Code allows 48 hours to reach agreement on these matters. If the MLD and the other parties do not agree on the reburial method, the project will follow PRC Section 5097.98(b) which states that "... the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance."</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
HAZARDS AND HAZARDOUS MATERIALS			
<p>MM HAZ-1: <i>Store, Handle, Use Hazardous Materials in Accordance with Applicable Laws.</i> The City shall ensure that all construction-related hazardous materials and hazardous wastes shall be stored, handled, and used in a manner consistent with relevant and applicable federal, state, and local laws. In addition, construction-related hazardous materials and hazardous wastes shall be staged and stored away from residences, stream channels, and steep banks to keep these materials a safe distance from nearby residents and prevent them from entering surface waters in the event of an accidental release.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>MM HAZ-2: <i>Properly Dispose of Contaminated Soil and/or Groundwater.</i> If contaminated soil and/or groundwater is encountered, or if suspected contamination is encountered during project construction, work shall be halted in the area, and the type and extent of the contamination shall be identified. A contingency plan to dispose of any contaminated soil or groundwater will be developed through consultation with appropriate regulatory agencies. If dewatering or hydrostatic testing of the pipeline is to occur during project construction, the water will be discharged to the City's wastewater treatment plant rather than released into any drainage system which would require prior approval from the RWQCB.</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>MM HAZ-3: <i>Develop and Maintain Emergency Access Strategies.</i> In conjunction with the mitigation measure identified in Section 4.16 Transportation (Develop a Traffic Control Plan), comprehensive strategies for maintaining emergency access shall be developed. Strategies shall include, but are not limited to, maintaining steel trench plates at the construction sites to restore access across open trenches and identification</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>of alternate routing around construction zones. Also, police, fire, and other emergency service providers shall be notified of the timing, location, and duration of the construction activities and the location of detours and lane closures.</p>			
WATER QUALITY			
<p>Standard Measure: <i>Implement Construction Best Management Practices.</i> BMPs to reduce erosion and siltation may include the following measures: avoidance of construction activities during inclement weather; limitation of construction access routes and stabilization of access points; stabilization of cleared, excavated areas by providing vegetative buffer strips, providing plastic coverings, and applying ground base on areas to be paved; protection of adjacent properties by installing sediment barriers or filters, or vegetative buffer strips; stabilization and prevention of sediments from surface runoff from discharging into storm drain outlets; and use of sediment controls and filtration to remove sediment from water generated by dewatering.</p>	During all phases of construction	Contractor	City of Milpitas Department of Public Works
NOISE			
<p>Standard Measure: Pile-driving will be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.</p>	During all phases of construction	Contractor	City of Milpitas Department of Public Works
<p>Standard Measure: Equipment will use available noise suppression devices and properly maintained mufflers. Construction noise would be reduced by using quiet or “new technology” equipment, particularly the quieting of exhaust noises by use of improved mufflers. All internal combustion engines used at the project site will be equipped with the type of muffler recommended by the vehicle manufacturer. In addition, all equipment will be maintained in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train, and other components.</p>	During all phases of construction	Contractor	City of Milpitas Department of Public Works

Description of Measure	Timeframe for Implementation	Responsibility for Implementation	Oversight for Implementation
<p>Standard Measure: Temporary walls/barriers/enclosures will be erected around stationary construction equipment when such equipment will be operated for an extended period of time (i.e., more than 2-3 days). Noise barrier walls and enclosures will consist of absorptive material in order to prevent impacts upon other land uses due to noise reflection. In addition, complete enclosure structures shall close or secure any openings where pipes, hoses, or cables penetrate the enclosure structure</p>	<p>During all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>TRANSPORTATION</p>			
<p>MM TRAF-1.1: <i>Prepare and Implement Traffic Control Plan.</i> In conjunction with the mitigation measure identified in <i>Section 4.4.8 Hazards and Hazardous Materials</i> (Develop and Maintain Emergency Access Strategies), the City shall require the contractor to prepare and implement effective traffic control plans to show specific methods for maintaining traffic flows. Examples of traffic control measures to be considered include: 1) use of flaggers to maintain alternating one-way traffic while working on one-half of the street; 2) use of advance construction signs and other public notices to alert drivers of activity in the area; and 3) use of “positive guidance” detour signing on alternate access streets to minimize inconvenience to the driving public.</p>	<p>TCP to be prepared prior to construction and maintained during all phases of construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>
<p>MM TRAF-1.2: <i>Return Roads to Pre-construction Condition.</i> Following construction, the City shall ensure that road surfaces that are damaged during construction are returned to their pre-construction condition or better.</p>	<p>After construction</p>	<p>Contractor</p>	<p>City of Milpitas Department of Public Works</p>

ATTACHMENT D



Legend

— New Work