CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, TDD: 586-3013, www.ci.milpitas.ca.gov

September 21, 2016

TO: **PROSPECTIVE CONSULTANTS**

SUBJECT: **REQUEST FOR PROPOSAL (RFP): FOR PROJECT CEQA//NEPA ENVIRONMENTAL CLEARANCE PREPARATION & SUPPORT SERVICES**

The City of Milpitas invites your firm to submit a proposal to provide "On-Call" professional services to support the City's 2016-2021 Capital Improvement Program projects. The City seeks the professional services of a firm or person qualified to provide project related Environmental Clearance documents for compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

The City intends to select the most qualified consultant(s) to provide the services on a "Time and Material" basis to be negotiated with the City. Services may include the preparation of environmental reports; studies; field services; analysis; determinations; and other related services to support the environmental clearance for City's Capital Improvement Program. Services may also include the preparation of permit packages for the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corp of Engineers, U.S. Fish & Wildlife, etc. City projects may include construction and maintenance activities in and around creeks, dredging, and within environmentally or historically sensitive areas.

The RFP process will identify the consultants who have training, certifications, licensing, and extensive experience in providing the requested services.

The list of potential projects where services may be required is shown in Section A, and is contingent upon receipt of project funding.

Individuals or firms should have specific and demonstrated expertise and success in providing the requested services including experience with work near ancient Native American Indian sites and work to facilities included on the State and Federal list of Historical Structures. The consultant(s) shall have a proven methods of budget and cost control and have the ability to work collaboratively with public agencies, and contractors.

The City may use a ranked list of interviewed Consultants for selecting additional consultants if required for other projects. The City may maintain the ranked list for a period of at least 24-months.

PROPOSAL SUBMISSION REQUIREMENTS:

To be considered by the City as responsive to this RFP, the proposals shall specifically address the information requested in each Section below to allow the City to adequately review each firm's qualifications including their approach to providing the requested services.

RFP Package: Five complete bound copies of the proposal and one PDF electronic copy on electronic disc shall be provided. The fee schedule specified in Section 7 of this announcement shall also be provided in a separate sealed envelope.

Following is the description for each required section in the proposal. Failure to comply with any of these requirements may be cause for a firm's proposal to be considered non-responsive.

SECTION 1: FIRM PROFILE

Provide a cover letter, table of contents page, and a summary that identifies and provides a brief description of the firm, including the year the firm was established, type of organization (partnership, corporation, etc.), and a statement of the firm's qualification for performing the requested services.

SECTION 2: PROJECT TEAM

Provide the firm's organization chart depicting the staffing proposed, highlighting the proposed project manager, and a table summarizing the roles and responsibilities for the key team members who will be assigned to the project including their resumes with required certifications and licensing as required to provide the services. Include applicable descriptions of similar work and specific duties the key team members have been directly involved with. Also include a chart of sub-consultants to be used, if any, and their relevant expertise, and include one page resumes.

SECTION 3: RELEVANT PROJECT EXPERIENCE

Provide a brief description and summary with examples of the relevant experiences with respect to providing CEQA/NEPA clearances for municipal Capital Improvement Projects. The relevant experiences listed should include begin and end dates of project, firm's work task fee, and key member involved with the relevant experience. Provide sufficient examples of reports, studies, EIR, Negative Declaration, etc. to allow City staff to determine the consultants experience.

SECTION 4: LOCAL PROJECT EXPERIENCE

Provide a summary of your experience in providing Environmental CEQA/NEPA services for local projects showing familiarity with agencies located within Santa Clara County. Indicate the location of your office and your ability to facilitate face-to-face meetings.

SECTION 5: REFERENCES

Provide a list of at least five references from recent clients. Include the project information, contact persons, email address and phone number.

SECTION 6: EVIDENCE OF INSURANCE COVERAGE

A sample copy of the City's standard consulting services agreement is provided in Attachment F for review by prospective consulting firms. Consultants shall submit any requested minor changes to this standard agreement in Section 6 of their

proposal. However, the City may not accept requested changes and will not entertain extensive or material changes to the agreement document. The City is only interested in consulting firms that can execute the standard agreement without changes or reductions to the legal requirements of the agreement.

The standard professional liability insurance requirement required by consulting firms is $2,000,000. However, due to the nature of the services requested, reduced coverage may be acceptable.

SECTION 7: FEE SCHEDULE

Provide a one page fixed fee schedule that includes the actual hourly rate for each classification of employees who will provide the requested services and the fees for related support costs (mileage, blueprint, reproduction, etc.) ***The fee schedule must be submitted in a separate sealed envelope and will not be used as part of the evaluation criteria.***

ELIGIBILITY REQUIREMENTS:

Once contacted for a contracting opportunity, each consultant must formally comply with the following eligibility requirements:

1. The Consultant's key personnel identified in the proposal must be immediately available for the service;
2. The consultant must be available and be able to provide the City of Milpitas with 100% dedication to the specific projects and without changes in personnel.
3. Key assigned staff's location or office must be within an hour's travel time of the City Engineer's office;
4. Key personnel identified in the proposal must be immediately available to work on the project;
5. Successful completion of background and professional reference check.

SELECTION PROCESS:

An evaluation committee consisting of City staff will review each RFP for completeness and content. Each RFP will be evaluated based upon the relevant experience of the consultant related to providing services for municipal construction projects.

The review and ranking of the proposals will be based upon the evaluation form shown in Attachment "D". Firms determined to be the most qualified and best fit for the City will be invited for an interview by the Consultant Review Board.

It is the City's intention to convene one or two Consultant Review Boards to interview the most qualified firms. Two or three consultants will be invited for an interview for each specialty. The interview will consist of seven to ten questions relating to specific elements of the services required, listed in Attachment "B".

No lengthy formal presentations of the firms' history or personal experience of proposed staff members will be allowed since the Board has already considered this in the written proposal.

Consultants' final placement on the list will be based on the rating of the Review Board and completion of satisfactory reference checks.

A list of City support services to the Consultant is shown in Attachment "E". A sample copy of a standard City consulting services agreement is included in Attachment "F".

Individual contracts for project services will be awarded on a project-by-project basis, dependent upon the project needs and available funding, and at such time as the City needs assistance. After review of the specific needs of a project and the necessary qualifications to meet those needs, a City representative will request services from a consultant and will describe the project and scope of work to be provided by the consultant. The consultant will, in turn provide a not-to-exceed cost estimate based upon its fixed fee schedule to the City. The consultant will perform the requested services under a standard City consulting services contract agreement – refer to Section F.

ANTICIPATED SCHEDULE:

Issue RFP:	September 26, 2016
RFP Submittals due to City:	October 10, 2016
Complete Review/Ranking of RFP's:	October 21, 2016
Interview Process:	October 28, 2016

In order to be considered, completed RFP packages shall be submitted to the City no later than October 10, 2016.

RFP packages shall be delivered to the City Hall Public Service Counter, Milpitas City Hall, 455 E. Calaveras Boulevard, Milpitas, California, 95035.

If you have any questions or desire additional information, please call Steve Erickson at (408) 586-3301. Thank you for your interest.

Sincerely,

Steve Erickson, PE
CIP Manager

Attachments:

A. Potential Project List
B. Possible Services
C. 2016-2021 CIP Project Sheets
D. Sample Evaluation Form
E. City Support Services
F. Sample City Standard Agreement

Attachments

A. POTENTIAL PROJECT LIST

List of Potential Projects contingent upon funding. Refer to the attached Capital Improvement Program Sheets in Attachment C for more detail.

1) Fire Station #2 and #3 Replacements
2) 3430 Midtown Street Light Project - Funded
3) 3425 Utility Underground 2017 - Funded
4) 3417 Recycled Water On-Site Conversions – Funded
5) 7129 Recycled Water Pipeline Segment 1
6) Recycled Water Pipeline Segment 2
7) Recycled Water Pipeline Segment 3
8) 5102 McCandless Park
9) Sports Center Baseball Field Renovation
10) Higuera Adobe Park Caretaker Cottage Renovation
11) Sports Center Skate Park
12) Sandalwood Park Renovation
13) Creighton Park Renovation
14) Other Projects within the 2016-2021 Capital Improvement Program as may be determined by the City.

B. ANTICIPATED SCOPE OF SERVICES

It is anticipated that the consultant would provide professional staff that are appropriately qualified to provide professional Environmental Clearance services for projects as assigned. The consultant would provide staff to manage and oversee the completion of all phases of required services including but not limited to the following tasks:

- Determine the level of environmental CEQA/NEPA clearance required: Notice of Preparation, Notice of Exemption, Notice of Determination – Neg. Dec, EIR, etc, and provide necessary environmental services from project inception to project closure.
- Assist City Planning Department Staff in the clearance of City projects.
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- Prepare and submit initial reports, studies and determinations as required, and follow-up reports, studies and determinations as required.
- Prepare and submit final reports, studies and determinations as required, incorporating comments from all responsible agencies.
- Coordinate and follow up with the responsible agencies, including applicable resource and permitting agencies.
- Provide final clearance documents and any follow-up reporting.
- Assist City staff in the preparation and tracking of agency permits including Fish & Game, Regional Water Quality Control Board, Santa Clara Valley Water District, U.S. Army Corp of Engineers.

- Perform project level environmental review under CEQA and clearances under NEPA for projects utilizing federal funding sources such as Bicycle Transportation Account (BTA), Transportation Equity Act -21 (TEA-21)/Congestion Mitigation and Air Quality (CMAQ), Save Americas Treasures (SAT), and Transportation Development Act (TDA).
- Assist with environmental document scoping and recommend necessary special or technical environmental studies
- Prepare special studies to perform required environmental analysis and formulate mitigation where necessary.
- Prepare necessary environmental documents for public circulation and approval.
- Prepare joint documents to meet the requirements of CEQA/NEPA, where necessary.
- Identify appropriate mitigation measures and review with City staff.
- Coordinate with applicable resource and permitting agencies including Watershed Protection Districts, California Department of Fish and Game, US Army Corp of Engineers, California Regional Water Quality Control Board, and California Department of Transportation, etc.
- Prepare appropriate notices and filings under CEQA/NEPA.
- Prepare and make presentation at public meetings or hearings.

C: City of Milpitas 2016-21 CAPITAL IMPROVEMENT PROGRAM
PROJECT CIP SHEETS

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Community Improvement	New	Fire Station #2 Replacement	1

CONTACT: Steve Erickson [3301]

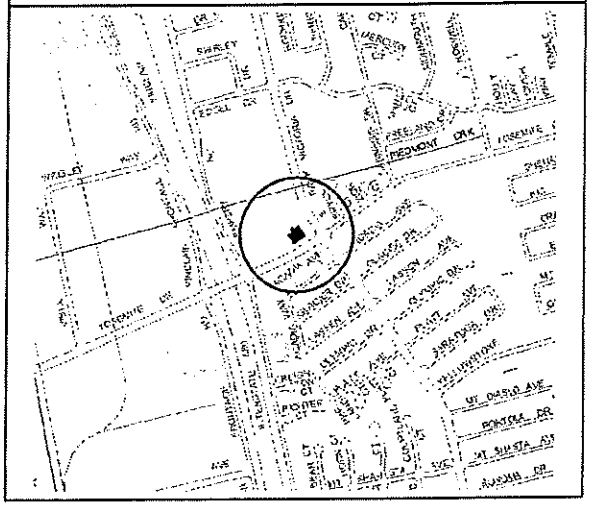
PRIORITY: Rehabilitation of Existing Capital Assets or Systems

$2,000

DESCRIPTION

This project provides for the design and construction of a new replacement Fire Station #2. Fire Station #2 is located on Yosemite Drive, and was constructed in the late 1960's.

DIAGRAM



NOTES:

An assessment report was completed in December 2014 to determine if the station could be remodeled and modernized or if it should be replaced. The conceptual estimate to remodel Station #2 is $6M and the new replacement is $10M. The costs shown are conceptual and the actual construction cost will be determined during the design phase.

Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	0	0	600,000	0	0	600,000
Administration	0	0	0	50,000	50,000	0	100,000
Inspection	0	0	0	0	100,000	0	100,000
Improvements	0	0	0	0	9,200,000	0	9,200,000
Totals	0	0	0	650,000	9,350,000	0	10,000,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Unidentified Funding	0	0	0	650,000	9,350,000	0	10,000,000
Totals	0	0	0	650,000	9,350,000	0	10,000,000

FINANCE NOTES

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Community Improvement	New	Fire Station #3 Replacement	1

CONTACT: Steve Erickson [3301]

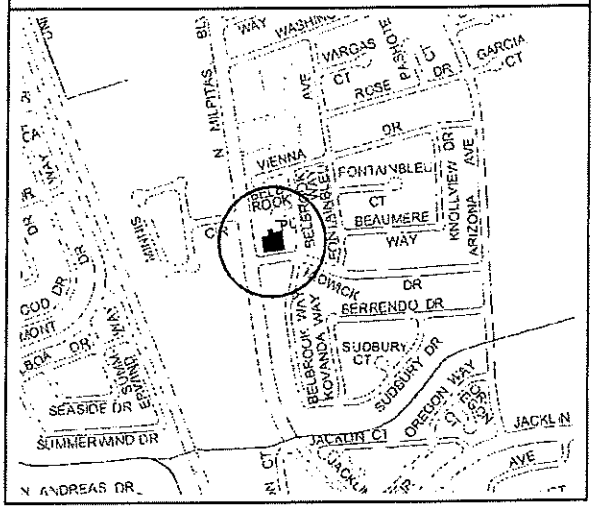
PRIORITY: Rehabilitation of Existing Capital Assets or Systems

$2,000

DESCRIPTION

This project Provides for the design and construction for the replacement of Fire Station #3. Fire Station #3 is located on Midwick Drive, and was constructed in the late 1960's.

DIAGRAM



NOTES:

An assessment report was completed in December 2014 to determine if the station could be remodeled and modernized or if it should be replaced. The conceptual estimate to remodel Station #3 is $5M and the new replacement is $8M. The costs shown are conceptual and the actual construction cost will be determined during the design phase.

Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	0	0	0	600,000	0	600,000
Administration	0	0	0	0	50,000	50,000	100,000
Inspection	0	0	0	0	0	100,000	100,000
Improvements	0	0	0	0	0	7,200,000	7,200,000
Totals	0	0	0	0	650,000	7,350,000	8,000,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Unidentified Funding	0	0	0	0	650,000	7,350,000	8,000,000
Totals	0	0	0	0	650,000	7,350,000	8,000,000

FINANCE NOTES

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

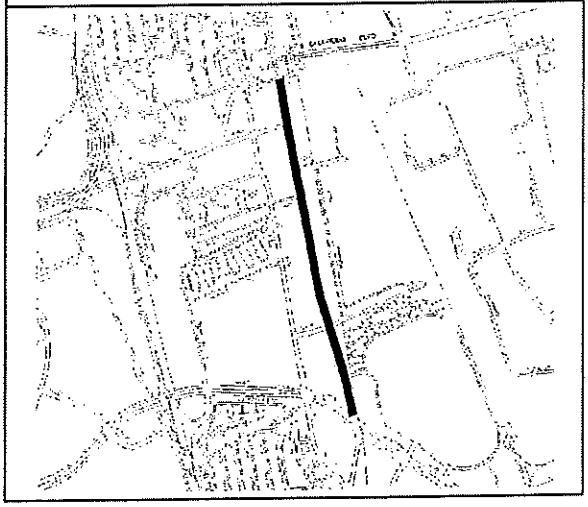
Category	Project		Estimate Level
Street Improvement	3430	Midtown Street Light Project	1

CONTACT: Steve Erickson [3301]

PRIORITY: Rehabilitation of Existing Capital Assets or Systems

$10,000

DIAGRAM



DESCRIPTION

This project provides for the installation of Midtown decorative street lighting along South Main Street from Carlo Street to Great Mall Parkway as a replacement to the existing cobra head lights. The project will be completed in phases. Conceptual cost estimates for the different project phases include: Carlo to Corning is $3M; Curtis to Great Mall Parkway is $1.5M; Corning to Curtis is $1.5M. The Corning to Curtis phase would be completed after PG&E Rule 20A undergrounding of private overhead utilities. Estimates are conceptual and actual construction cost will be developed during the design process.

NOTES:

The estimated cost for PG&E Rule 20A undergrounding of overhead utilities between Corning and Curtis is $3.3M and will be provided under the Utility Undergrounding 2020 CIP. FY16-17 funding will allow staff to begin the conceptual design phase to develop design scope and layout within the sidewalk, estimated design and construction costs, project phasing and schedule. Staff is pursuing the feasibility and formation of a Business Improvement District (BID) funded by Developer contribution's to fund the street frontage improvements along the Main Street corridor.

Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	175,000	0	200,000	0	0	375,000
Administration	0	75,000	0	100,000	0	0	175,000
Inspection	0	0	0	100,000	0	0	100,000
Improvements	0	0	0	5,600,000	0	0	5,600,000
Totals	0	250,000	0	6,000,000	0	0	6,250,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Grants/Reimb./Developer Fees	0	0	0	6,000,000	0	0	6,000,000
General Govemment CIP Fund	0	250,000	0	0	0	0	250,000
Totals	0	250,000	0	6,000,000	0	0	6,250,000

FINANCE NOTES

Staff anticipates funding through Developer contributions and proceeds from the BID.

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Street Improvement	3425	Utility Undergrounding 2017	1

CONTACT: Steve Erickson [3301]

PRIORITY: Improve the Quality of Life

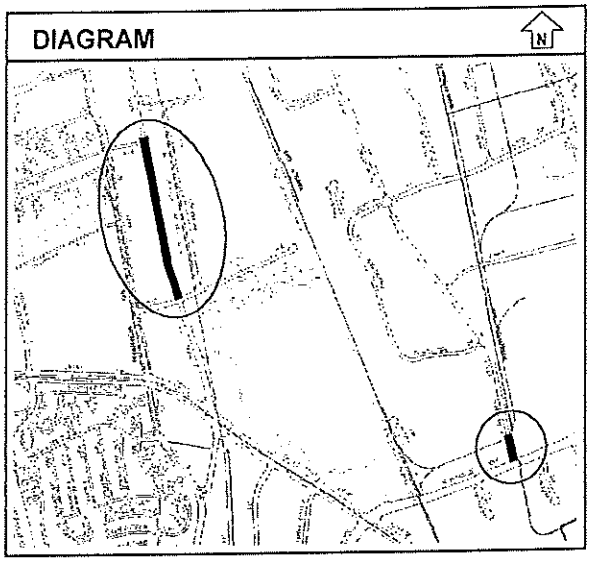
DESCRIPTION

This project provides preliminary engineering and City administration for the undergrounding of existing overhead electric telephone and CATV facilities at various locations Citywide. Construction is funded by the PG&E Rule 20A Program and other utilities (Approximately $3.6 million in PG&E credits are available as of January 2013.) Once the utility underground district is created, the PG&E construction schedule is 5 to 7 years later.

NOTES:

Two projects are anticipated to draw Rule 20A funding the City has banked. The South Main Street Utility Underground District from Corning to Curtis Avenue is estimated at $3.3M, and is programmed for FY16-17. Any remaining funding would be used to underground overhead utility wires along South Milpitas at Montague Expressway which is estinated at $250K. PG&E estimated costs to underground conductor is $1,000/ft not including surface restoration cost.

DIAGRAM



Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	200,000	0	0	35,000	0	235,000
Administration	0	50,000	0	0	15,000	0	65,000
Inspection	0	0	0	0	0	0	0
Equipment	0	0	0	0	0	0	0
Building	0	0	0	0	0	0	0
Totals	0	250,000	0	0	50,000	0	300,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Unidentified Funding	0	0	0	0	50,000	0	50,000
General Government CIP Fund	0	250,000	0	0	0	0	250,000
Totals	0	250,000	0	0	50,000	0	300,000

FINANCE NOTES

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Community Improvement	3417	Recycled Water On-site Conversions	1

CONTACT: Jeffery Leung [3326]

PRIORITY: Improve the Quality of Life

$2,000

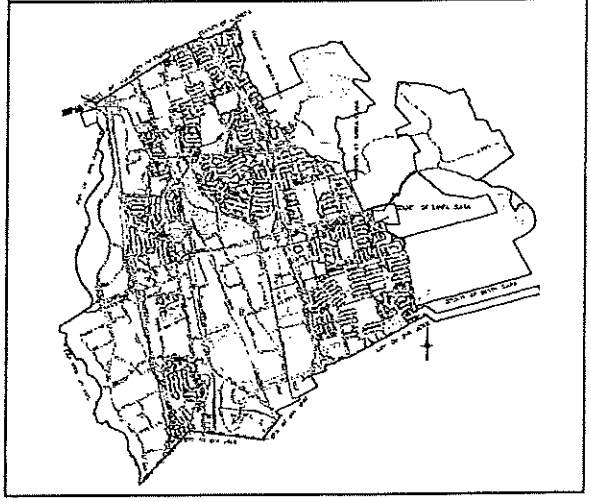
DESCRIPTION

This project provides for the conversion of existing city building, park, and street landscape facilities that are served by potable water to recycled water to reduce potable water consumption due to the drought emergency.

NOTES:

Candidates for recycled water conversions include Escuela Parkway Medians, Hetch-Hetchy rights-of-way, Augustine Park, Community Gardens, and the civic center grounds including City Hall, Community Center, and the Senior Center.

DIAGRAM



Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Administration	0	100,000	0	0	0	0	100,000
Inspection	0	100,000	0	0	0	0	100,000
Improvements	0	600,000	0	0	0	0	600,000
Totals	0	800,000	0	0	0	0	800,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Park Fund	0	300,000	0	0	0	0	300,000
General Government CIP Fund	0	500,000	0	0	0	0	500,000
Totals	0	800,000	0	0	0	0	800,000

FINANCE NOTES

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Water Improvement	7129	Recycled Water Pipeline Segment 1	1

CONTACT: Julie Waldron [3314]

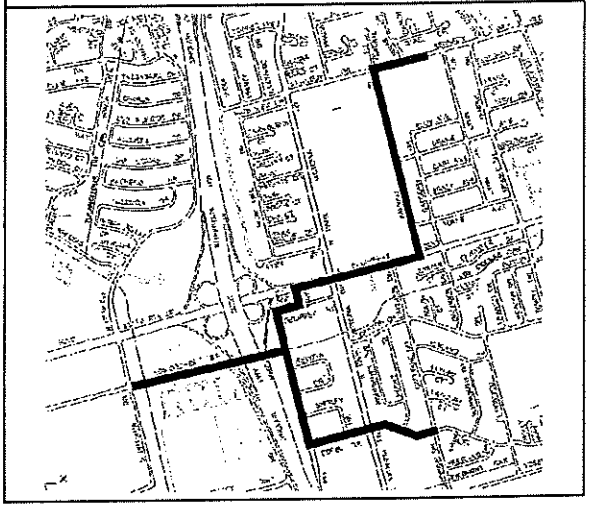
PRIORITY: Improve the Quality of Life

$5,000

DESCRIPTION

This project provides for the extension of recycled water lines as part of the City's efforts to diversify the water supply system and respond to the ongoing drought emergency by offsetting the use of potable water. The project is divided into five segments. Segment 1 provides for the extension of the pipeline in Los Coches Street under Berryessa Creek, and I-680 to Dempsey Road. The new lines will extend to Cardoza Park to the north and to Randall Elementary School on the south.

DIAGRAM



NOTES:

The design for the Segment 1 pipeline extension is included in the Dempsey Road Utility Improvement Project CIP 7118 & 7100. This 10,000 LF recycled pipeline extension is estimated to cost $9.8M.

Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	0	0	0	0	0	0
Administration	0	125,000	0	0	0	0	125,000
Surveying	0	0	0	0	0	0	0
Inspection	0	125,000	0	0	0	0	125,000
Improvements	0	9,600,000	0	0	0	0	9,600,000
Totals	0	9,850,000	0	0	0	0	9,850,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Water Bonds	0	9,850,000	0	0	0	0	9,850,000
Totals	0	9,850,000	0	0	0	0	9,850,000

FINANCE NOTES

The total cost for Segment 1 is estimated at $9.8M with funding from water bond.

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Water Improvement	New	Recycled Water Pipeline Segment 2	1

CONTACT: Marilyn Nickel [3347]

PRIORITY: Improve the Quality of Life

$5,000

DESCRIPTION

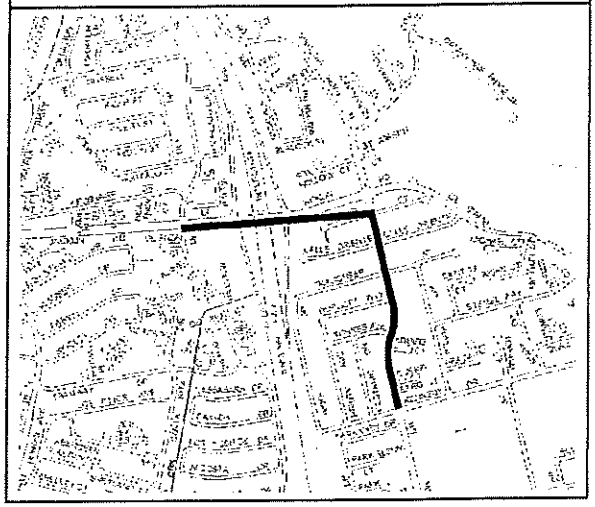
This project provides for the extension of recycled water lines as part of the City's efforts to diversify the water supply system and respond to the ongoing drought emergency by offsetting the use of potable water.

The project is divided into five segments. Segment 2 provides for the design and construction of a northern pipeline extension along North Park Victoria Drive across I-680 to loop with an existing recycled water system in Jacklin Road at North Hillview Drive. The total cost for Segment 2 is estimated at $4.5M.

NOTES:

Alignments shown are conceptual. The overall recycled water expansion project has been broken out into separate projects to better accommodate the needs and timing of the various funding agencies.

DIAGRAM



Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	0	0	550,000	0	0	550,000
Administration	0	0	0	800,000	0	0	800,000
Surveying	0	0	0	25,000	0	0	25,000
Inspection	0	0	0	125,000	0	0	125,000
Improvements	0	0	0	3,000,000	0	0	3,000,000
Totals	0	0	0	4,500,000	0	0	4,500,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Grants/Reimb./Developer Fees	0	0	0	4,500,000	0	0	4,500,000
Totals	0	0	0	4,500,000	0	0	4,500,000

FINANCE NOTES

Staff will pursue Proposition 1 grants and State Revolving Loan financing.

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Water Improvement	New	Recycled Water Pipeline Segment 3	1

CONTACT: Marilyn Nickel [3347]

PRIORITY: Improve the Quality of Life

$5,000

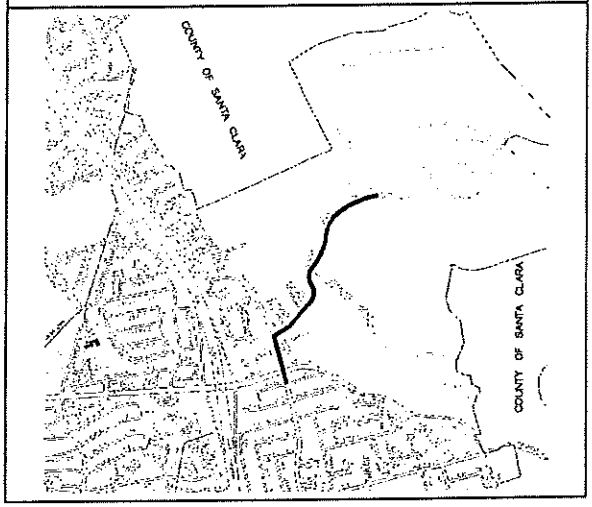
DESCRIPTION

This project provides for the extension of recycled water lines as part of the City's efforts to diversify the water supply system and respond to the ongoing drought emergency by offsetting the use of potable water. The project is divided into five segments. Segment 3 provides for the design and construction of pipeline extensions into the foothills to serve high-use irrigation customers including Summitpointe Golf Club, Spring Valley Golf Course, CalFire, and Ed Levin County Park. Segment 3 includes a booster pumping station. The total cost for Segment 3 is estimated at $15.8M.

NOTES:

Alignments shown are conceptual. The overall recycled water expansion project has been broken out into separate projects to better accommodate the needs and timing of the various funding agencies.

DIAGRAM



Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	0	0	2,500,000	0	0	2,500,000
Administration	0	0	0	2,000,000	0	0	2,000,000
Surveying	0	0	0	100,000	0	0	100,000
Inspection	0	0	0	0	200,000	0	200,000
Improvements	0	0	0	0	11,000,000	0	11,000,000
Totals	0	0	0	4,600,000	11,200,000	0	15,800,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Grants/Reimb./Developer Fees	0	0	0	4,600,000	11,200,000	0	15,800,000
Totals	0	0	0	4,600,000	11,200,000	0	15,800,000

FINANCE NOTES

Staff will pursue Proposition 1 grants, State Revolving Loan financing, and stakeholder cost-sharing.

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Park Improvement	5102	McCandless Park	1

CONTACT: Steven Machida [3355]

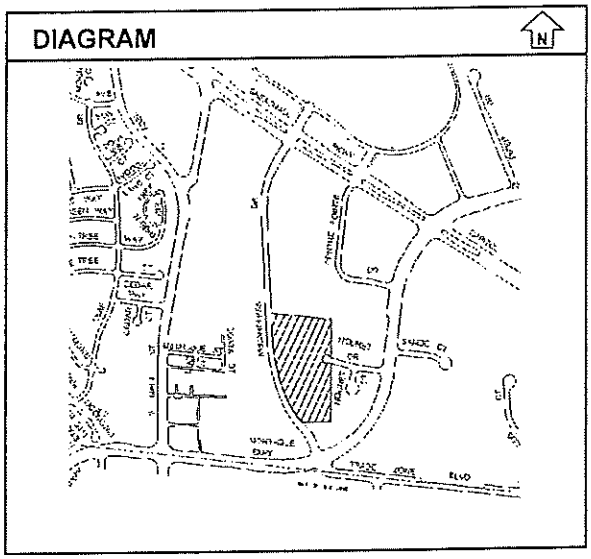
PRIORITY: Improve the Quality of Life

$10,000

DESCRIPTION

This project provides for a new public park adjacent a new MUSD elementary school located on McCandless drive in the Transit Area. The park will provide approximately 4 acres of City public park space, which will include play fields, athletic courts, parking, picnic area, play structure, and restrooms.

DIAGRAM



NOTES:

The first phase of this project is to coordinate the layout and schematic design of the new park with the adjoining MUSD elementary school to maximize both sites. The cost for construction, design and construction support services will be added once the schematic design phase is completed. Park needs to be completed at time the new school is anticipated to open, which is August 2018. Construction cost to be determined in the design phase.

Uncommitted Balance as of 5/1/2016: $52,000

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	250,000	0	0	0	0	0	250,000
Administration	50,000	0	0	0	0	0	50,000
Inspection	0	0	0	0	0	0	0
Improvements	0	0	0	0	0	0	0
Totals	300,000	0	0	0	0	0	300,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
TASP Impact Fees	300,000	0	0	0	0	0	300,000
Totals	300,000	0	0	0	0	0	300,000

FINANCE NOTES

City Council 4/7/15 project created.

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Park Improvement	New	Sports Center Baseball Field Renovation	1

CONTACT: Steven Machida [3355]

PRIORITY: Rehabilitation of Existing Capital Assets or Systems

$5,000

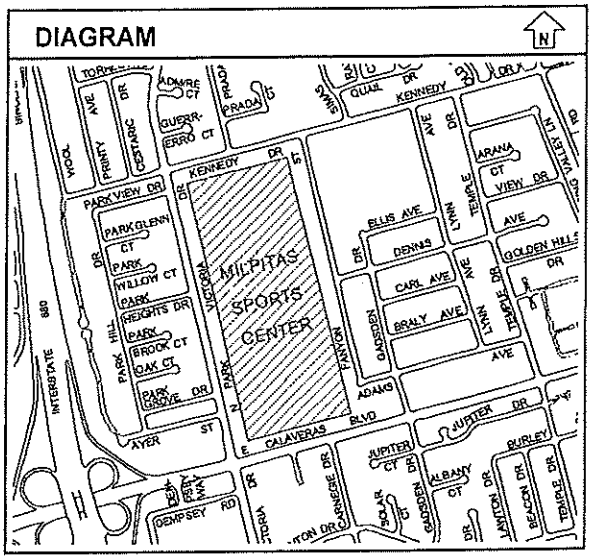
DESCRIPTION

This project will evaluate the two existing baseball fields located along the eastern edge of the Sports Center field's park. Improvements may include new synthetic turf ball fields, backstop structures, bleachers, field and pathway lighting, ADA access improvements, emergency access, drainage improvements, fencing, sound system, landscape, irrigation, and other required code improvements. The City owns and maintains the existing snack shack and restroom building located adjacent to the fields. The structure has reached the end of its service life and requires restoration or replacement.

NOTES:

A feasibility study will first be completed to provide a concept plan for the new fields and to determine estimated design and construction costs.

DIAGRAM



Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	0	140,000	0	0	0	140,000
Administration	0	0	10,000	0	0	0	10,000
Inspection	0	0	0	0	0	0	0
Improvements	0	0	0	0	0	0	0
Totals	0	0	150,000	0	0	0	150,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Midtown Park Fund	0	0	75,000	0	0	0	75,000
Park Fund	0	0	75,000	0	0	0	75,000
Totals	0	0	150,000	0	0	0	150,000

FINANCE NOTES

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Park Improvement	New	Higuera Adobe Park Caretaker Cottage Renovation	1

CONTACT: Steve Erickson [3301]

PRIORITY: Rehabilitation of Existing Capital Assets or Systems

$5,000

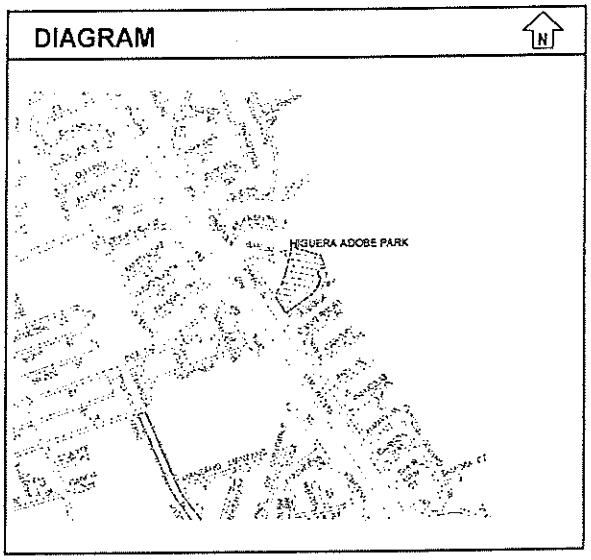
DESCRIPTION

This project will be completed in phases and provides for the interior and exterior restoration of the Higuera Adobe Park caretaker cottage. Project phases would develop a plan for the desired future use of the renovated structure; assist staff in determining the extent of required improvements and restoration; determine state and federal requirements for renovation of historic structures; and determine required permitting and code compliance. Design and construction cost estimates and schedule will also be developed in future project phases.

NOTES:

The initial FY17-18 funding will provide for an assessment of the level of required building repairs and a determination of the historic and code related improvement required based upon the desired use of the structure. This assessment will develop the costs estimates and schedule for the design and construction the improvements. Funding will be through the Santa Clara County Open Space Authority.

DIAGRAM



Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	0	100,000	0	0	0	100,000
Administration	0	0	70,000	0	0	0	70,000
Totals	0	0	170,000	0	0	0	170,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Grants/Reimb./Developer Fees	0	0	170,000	0	0	0	170,000
Totals	0	0	170,000	0	0	0	170,000

FINANCE NOTES

Staff anticipates grant funding from the Santa Clara Valley Open Space Authority.

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Park Improvement	Plan	Sports Center Skate Park	1

CONTACT: Julie Waldron [3314]

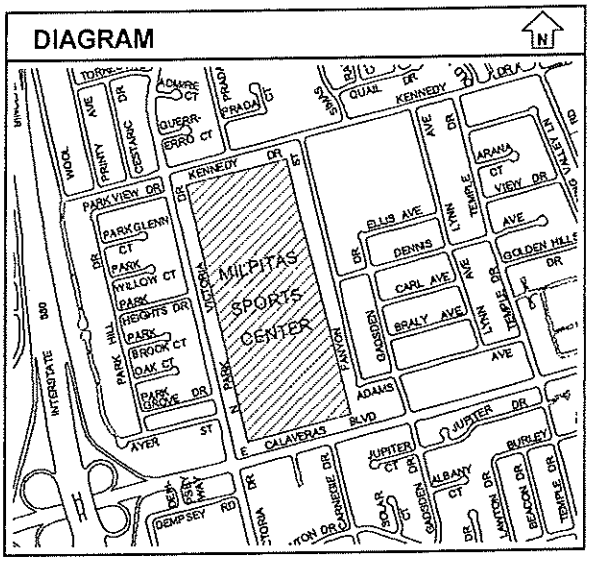
PRIORITY: Improve the Quality of Life

$10,000

DESCRIPTION

This project provides for the design and construction of a new skate park to be located at the Milpitas Sports Complex between the parking lot and the newly renovated fields. The 20,000 sq.ft skate park will include hardscape skate structures, lighting, irrigation, landscaping, drainage, and amenities.

DIAGRAM



NOTES:

Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	0	300,000	0	0	0	300,000
Administration	0	0	175,000	0	0	0	175,000
Inspection	0	0	50,000	0	0	0	50,000
Improvements	0	0	1,125,000	0	0	0	1,125,000
Totals	0	0	1,650,000	0	0	0	1,650,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Park Fund	0	0	750,000	0	0	0	750,000
Midtown Park Fund	0	0	900,000	0	0	0	900,000
Totals	0	0	1,650,000	0	0	0	1,650,000

FINANCE NOTES

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Park Improvement	Plan	Sandalwood Park Renovation	1

CONTACT: Steve Erickson [3301]

PRIORITY: Rehabilitation of Existing Capital Assets or Systems

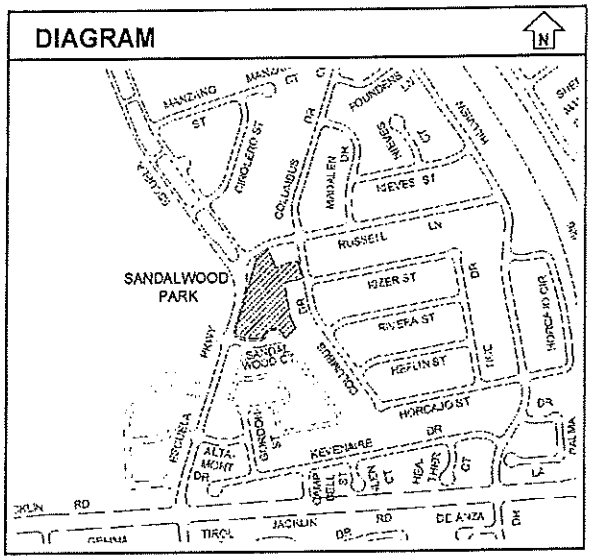
DESCRIPTION

This project provides for the design and construction of improvements at Sandalwood Park. Improvements include picnic and playground area renovation, ADA access and path improvement, and renovation of irrigation, and landscaping.

NOTES:

Sandalwood Park is approximately 3.9 acres, and it is heavily used. The park was originally constructed in 1978, and was expanded in 1988. Play structures were replaced pre 1992.

DIAGRAM



Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	0	175,000	0	0	0	175,000
Administration	0	0	100,000	50,000	0	0	150,000
Inspection	0	0	0	50,000	0	0	50,000
Improvements	0	0	0	900,000	0	0	900,000
Totals	0	0	275,000	1,000,000	0	0	1,275,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Park Fund	0	0	275,000	1,000,000	0	0	1,275,000
Totals	0	0	275,000	1,000,000	0	0	1,275,000

FINANCE NOTES

City of Milpitas

2016-21 CAPITAL IMPROVEMENT PROGRAM

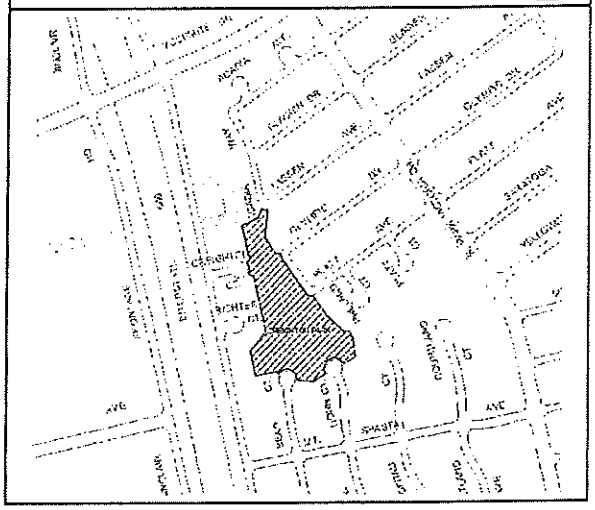
Category	Project		Estimate Level
Park Improvement	Plan	Creighton Park Renovation	1

CONTACT: Steve Erickson [3301]

PRIORITY: Rehabilitation of Existing Capital Assets or Systems

$5,000

DIAGRAM



DESCRIPTION

This project provides for the design and construction of improvements at Creighton Park. Improvements include picnic and playground area renovation, ADA access and path improvement, and renovation of lighting, irrigation, and landscaping.

NOTES:

Creighton Park is approximately 5 acres, and it is heavily used. The park was originally constructed in 1968, and subsequently renovated in 1981. The play structures were replaced in 1991. Project to be coordinated with future Recycled Water Segment Projects. Project funding for design and administration were combined to occur in the same fiscal year as construction, FY18-19.

Uncommitted Balance as of 5/1/2016: $0

ESTIMATED COST	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Design	0	0	0	200,000	0	0	200,000
Administration	0	0	0	150,000	0	0	150,000
Inspection	0	0	0	50,000	0	0	50,000
Improvements	0	0	0	1,000,000	0	0	1,000,000
Totals	0	0	0	1,400,000	0	0	1,400,000

FINANCING	Prior Year	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Park Fund	0	0	0	1,400,000	0	0	1,400,000
Totals	0	0	0	1,400,000	0	0	1,400,000

FINANCE NOTES

D. SAMPLE EVALUATION FORM

Consultant:_____

Criteria	(a) weight	(b) score (0-10)	(a) x (b) Weighted score	Comments
1. Staff Team - Names and qualifications of key personnel to be used on this service, their capacity or role; including applicable descriptions and dates of similar work these persons have been directly involved with; be specific about the duties performed; Names and qualifications of any sub-consultants, including the capacity and projects in which they will be utilized.	6			
2. Experience - Describe your experience in providing CEQA/NEPA clearances with regard to Municipal Capital Improvement Projects.	6			
3. Experience - Describe your experience in providing CEQA/NEPA clearances for municipal projects.	6			
4. References, overall impression and assessment	2			
Subtotal **TOTAL = Subtotal Divided by 2**				

REMARKS:

E. CITY SUPPORT SERVICES

The City will provide the following support and information:

1. Define overall project scope and project objectives.
2. Provide conceptual project drawings and relevant reports.
3. Provide historical and record information as available.

F. SAMPLE CITY STANDARD AGREEMENT & INSURANCE REQUIREMENTS

Project Name:
Project No. Date:

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND

_____

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 _____ ("Consultant") as of _____.

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 _____, 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 a guaranteed maximum price not to exceed (spell out) $_____ OR City hereby agrees to pay Consultant an amount not to exceed (spell out) $ _____ based on time and materials (Pick based on project) 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 _____ dollars ($.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 Staff person name 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:

_____
_____
_____

Any written notice to City shall be sent to:

455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

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

CITY OF MILPITAS

_____

Thomas C Williams, City Manager

APPROVED AS TO FORM:

_____

Christopher J. Diaz, City Attorney

APPROVED AS TO CONTENT:

_____

, Director of Engineering

CONSULTANT

_____

_____

Name & Title

Taxpayer Identification Number

_____

Corporate Entity Number

_____

EXHIBIT A

SCOPE OF SERVICES FOR _____

EXHIBIT B

COMPENSATION SCHEDULE

EXHIBIT C

INSURANCE DOCUMENTS