

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of _____, 2020 (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and **Urban Field Studio**, a Limited Liability Partnership, with its principal place of business at **2169 Folsom Street, M304, San Francisco, CA, 94110** (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

- A. City is a public agency of the State of California and is in need of professional services for the following project:
Transit Area Specific Plan 2020 Update (hereinafter referred to as “the Project”).
- B. Consultant is duly licensed and has the necessary qualifications to provide such services.
- C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Five Hundred Forty Thousand Dollars and Zero Cents (\$540,000.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in

the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement term and for four (4) years from the date of final payment under the Agreement for inspection by City.

5. Term of Performance.

The term of this Agreement shall be **from the Effective Date of this contract to December 31, 2021**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement. The performance of work shall be generally in accordance with the Activity Schedule provided as Exhibit C.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to

so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. **Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.** Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit D (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code

Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled

to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

c. The Consultant understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Consultant's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign **Christina Paul of M-Group** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Ned Thomas, Planning Director

CONSULTANT:

Jane Lin

Principal in Charge

Urban Field Studio

2169 Folsom Blvd, M304

San Francisco, CA 94110

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona

fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

30. Wage Theft Prevention

a. Consultant, and any subconsultant it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

b. BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONSULTANT OR ITS SUBCONSULTANTS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONSULTANT AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONSULTANT OR ITS SUBCONSULTANT(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

c. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Consultant or a subconsultant it employs to perform work under this Agreement has violated any applicable wage and hour law, or Consultant learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Consultant shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Consultant or its subconsultant(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Consultant or its subconsultant is subject to a payment or other alternative plan, the Consultant or its subconsultant shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

d. For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

e. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

f. Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND URBAN FIELD STUDIO**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

Steven G. McHarris, Interim City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved:

Walter C. Rossmann, Risk Manager/Director
of Finance

Approved As To Content:

Ned Thomas, Planning Director

URBAN FIELD STUDIO

Signature

Name

Title

Date

DIR Registration Number (If Applicable)

EXHIBIT A

SCOPE OF SERVICES

Urban Field Studio will be working with technical sub-consultants M-Group, EPS, W-Trans, Lexington Planning, ICF environmental services, and BKF Engineers to prepare the TASP Update.

Phase 1: Kickoff, Visioning, and Project Management

Task 1.1. Project Kick Off Meeting and Tour

The project begins with a kick-off meeting and site tour with all consultants (the Team) and City staff (Staff). Staff will be led by the City's TASP Manager. The Team will come to the meeting ready to determine the schedule, generate a list of needs for existing conditions, and gather initiating information from Staff. The Plan Boundary and Focal Area will also be discussed at this first meeting. The Team will work closely with the City to examine the plan area boundaries and determine whether or not it is advantageous to expand the plan area, including the pros, cons, and plan process implications of various options. Even though the plan area boundary may shift after this period, this will minimally allow the Team to surface and discuss major options. The Project Manager will work with City staff to prepare the kick-off meeting logistics.

Consultants Involved: ALL

Task 1.2 Check in Meetings/Calls

There will be regular check-in calls with project managers and occasional check-in meetings with the Team as needed, anticipated to be about 2 times a month.

Consultants Involved: ALL

Task 1.3 Community Engagement Approach Meeting/Memo

Outreach for the project begins in this first phase with the development of a Community Engagement Approach. A separate meeting about the Community Engagement Approach will follow after the kick-off meeting. This meeting will be an opportunity to coordinate with the Public Relations and Website Staff. The agenda for this meeting is to coordinate the project website, determine the stakeholders and groups we will reach out to, outreach format, timing, and messaging. The Community Engagement Approach Memo will summarize and detail the outreach plan with descriptions of all outreach activities, schedule of events, process and timing for releasing collateral and project information materials, as well as team implementation roles.

Generally, Staff will distribute and provide communication for the Public Meeting. The Team will provide graphic materials as needed. The Team will provide content for a Project Website updates. Staff will take emails and comments from the project website. The Team will develop draft and final workshop materials. The Team will revise these materials based on one round of consolidated edits from the City. The Team will work with the City to locally produce meeting materials like posters, if desired. Materials can include:

- Event announcements (digital only)
- Posters (digital only)

- Plan for temporary landscape or streetscape installations
- Materials needs list
- Sign-in sheets
- Comment cards

The Team will provide a brief input summary memo for public meetings as well as photo documentation.

Consultants Involved: UF, M-Group

Deliverable: Community Engagement Approach Memo

Task 1.4 Project Management

The Team will provide strong, hands-on project management throughout the planning process. This includes ongoing contact with the internal planning team as well as project administration to review project concepts and keep the project on schedule and budget. This subtask includes internal and external project coordination and management activities, including meetings, emails and phone calls with City Staff. This subtask also includes internal coordination and management between Team members.

Consultants Involved: UF, M-Group

Task 1.5 Project Website

The project website will be a central reference point for communicating, archiving, and collecting information from community members. The team will work with Staff to identify the best hosting platform and process to maintain the website. This may be on the City site or a standalone site. The Team will either provide information and documentation for upload on the City's site or develop the site on another platform. It is assumed that the City will be the conduit for feedback gathered through the website. Content for the project website can include the outreach schedule, major deliverables and milestones, project updates, videos of public sessions, and public commentary, and it can be used in email newsletters, websites, and social media.

Consultants Involved: UF, M-Group

Deliverable: Project Website Launch

Phase 2: Existing Conditions

Task 2.1 Stakeholder Interviews

The Team will interview City Staff, Council Members, stakeholders (property owners, business owners, and community members identified by the City) and representatives from the Great Mall and the VTA in person, or by phone if necessary, consolidated into a two-day period. A summary of findings will be part of the Existing Conditions Report.

Consultants Involved: UF, M-Group, EPS

Task 2.2 Public Survey

The Team will work with City Staff to develop and distribute a simple online survey designed to focus specifically on future opportunities for the TASP area. The Team will develop the survey instrument in order to obtain information from the community on issues to be considered during the update process. The results of the survey will be collected and analyzed by the Team to be included in the Existing Conditions Report.

Consultants Involved: UF, M-Group

Task 2.3 Developer Engagement

Together with City and Staff, the Team will attend three meetings with major local developers and landowners, including one meeting of the City's Community Development Roundtable (convened by the City and made up of local developers), one with VTA representatives, and one with Great Mall representatives. A SWOT (Strengths Weaknesses Opportunities and Threats) analysis will be used during the forum. A summary of findings will become part of the Existing Conditions Report.

Consultants involved: UF, EPS, M-Group, LEX

Task 2.4 Existing Conditions Report

The Team will develop an inventory and evaluation of the TASP area's existing conditions, focusing particularly on the changes since the existing plan was developed. This will include a review of existing and available data, plans, maps and reports that relate to the TASP area and the areas it relates directly to, including identifying public projects and improvements that have occurred since the last TASP as well as needs for future public projects and improvements. The results of this analysis will be compiled into an Existing Conditions and Opportunities Presentation/Report. The report will include a SWOT analysis of the current and projected conditions in the TASP area and will synthesize key findings in the format of a detailed PowerPoint presentation. The report will be highly graphic and include approximately 60 slides.

It is anticipated that the report will include the following topical sections:

1. Introduction and Executive Summary - This section will be an overall summary of the report that will include an introduction, executive summary, major findings, issues and opportunities.
2. TASP Update Approach - This is an overview of the way the team will reformat the TASP including a review of the TOC, Schedule, and strategy.

3. Community Input - this will be a summary of our outreach approach and findings from stakeholders [MGroup]
4. SWOT Analysis
5. TASP Area/Milpitas Changes - Urban Field Team will work with City Staff to prepare a section of the presentation/report highlighting key recent changes in Milpitas and the TASP area, especially as it may inform the direction for future planning and design. This would include looking at land uses, existing development policy, and summarizing the development that has occurred to date. [UF/MGroup/LEX]
 - a. Table of development per EIR
 - b. Table of Land Use Acreage at Buildout, compared with original TASP
 - c. Updated Map of Land Uses, Zoning
6. Map Boundaries and Opportunity Areas: This section highlights the opportunity areas and suggests boundaries for the TASP.
 - a. Updated Map of Site Context, Aerial
 - b. Map of Opportunity Sites
7. Demographics - The analysis will summarize demographic trends in both the TASP area and the city as a whole. The demographics includes a projection of school demand. [EPS]
 - a. Table of Projected Student Enrollment and impact on MUSD
8. Limited Market Analysis - The report will summarize the economic existing conditions analysis, including the Limited Market Analysis: Residential and Commercial Market Trends. Inclusion of 5-, 10-, and 20-year projections. An overview of economic needs and trends. [EPS]
 - a. Table of Projected New Development in the TASP
9. Design Summary and Sense of Place - describes the look, feel and character of existing buildings, plazas, streets, pathways and other public spaces. This will identify landscape and architectural patterns and themes to be preserved, character elements to emphasize and barriers to be addressed. [UF]
 - a. Transit Area Development
 - b. Zoning/ Building Massing
 - c. Street System
 - d. Bicycle Network Map
10. Transportation - This section will summarize and analyze existing transportation and mobility facilities, including: transportation, circulation, access, and parking; regional auto and rail access; bus service; bicycle and pedestrian facilities; and the City's TDM program. [UF, WTrans]
 - a. Updated Map of Transportation System and Transit Service
 - b. Update with new BART information

11. Urban Realm - this will focus on streets, connections, and the design of public spaces, including location of sites. [UF]
 - a. Evaluate pedestrian circulation improvements that serve workday and weekend travel patterns to and from the Transit Station
 - b. Table of Public Park Space Required and Provided
 - c. Revisit of Trail Widths and Setbacks
12. Infrastructure - This section will summarize information on the existing condition of infrastructure, including water, sewer, electrical, telecommunications, natural gas, cable television, wireless and fiber optics. [BKF]
13. Summary of City Tools for Implementation - This is a summary of the BIP, collected fees, and how effective, or ineffective, existing tools have been to implement the desired development. [EPS]
14. CEQA Concerns - The report will summarize the status of the CEQA process, as well as preliminary analysis on areas in which the plan will likely mitigate potential impacts. [ICF] The team will also identify the parts of the existing TASP that will be addressed in the EIR.
15. Next Steps

Consultants Involved: All

Deliverable: Existing Conditions Report in a Presentation Format

Phase 3: TASP Framework

Task 3.1 Plan Framework Strategy Session

A key part of updating the plan will be a focused strategy session amongst the Staff and Team that will take place over two days. Preparing for the strategy session includes a thorough review of the Existing Conditions report and a list of Staff developed questions. There is limited Staff involvement the first day as the team generates as many ideas as possible with key specialists dropping in for specific topics. A presentation will be provided in the middle of the second day to Staff department heads, key stakeholders, and consultants, followed by a discussion of the ideas generated.

Following the Strategy Session, the Team will be compiling a list of proposed Amendments to the TASP. The team will be thinking about:

1. What to keep from the original TASP
2. The new TASP boundaries
3. Economic Opportunities and Constraints
4. Development Strategies and Scenarios
5. Land Use Strategies
6. Multi-Modal Transportation Opportunities (improved Ped Bike connections)
7. Streetscape and Open Space (sideway and pathway enhancements)
8. Placemaking and Physical Improvements
9. Combined Infrastructure and Public Realm Opportunities
10. Planning Policy Levers - Zoning
11. Tools for Implementation

Consultants involved: All

Deliverable: Proposed Amendments to the TASP and Session Summary Memo

Task 3.2 City Council and Planning Commission Meetings

There will be three City Council Meetings (or alternatively City Council Work Sessions) in Phase 3. (There will be two more City Council Meetings after January 2021 in Phase 5 that are Task 5.1). There will be up to three Planning Commission meetings to provide updates and receive recommendations from the Commission to the City Council.

- Council Meeting #1 will be a brainstorming session working off of initial ideas proposed for the TASP Framework Strategy Session (Task 3.1).
- Council Meeting #2 will follow community input and TASP Framework Development and will test ideas for the TASP Update
- Council Meeting #3 will follow community input on Zoning Updates to seek City Council Approval of zoning changes and the TASP Framework Plan.

Staff and the consultants will prepare a presentation for each meeting. Staff will help prepare handouts and responses to questions prior to the meeting, if needed.

Staff and the consultants will prepare presentations and other informational materials, as needed, for Planning Commission meetings.

Consultants involved: UF, M-Group, EPS, and (optionally) subconsultants as needed by topic
Deliverable: Presentations for each Meeting

Task 3.3 TASP Update Community Meeting

This Public Meeting will present the results of the survey and TASP Framework ideas and provide an opportunity for feedback to the general public. Ideally, this public meeting will be scheduled after BART opens. This is an opportunity to test the initial direction of any ideas from the TASP Framework Strategy Session and Council input. The details of this will be provided in the Community Engagement Approach Memo.

Consultants involved: UF, M-Group

Deliverable: Materials for Public Meeting as described in the Community Engagement Approach Memo

Task 3.4 Development of TASP Framework

The Team will develop ideas for the TASP Framework through topical meetings internally and in check-ins with the City. The topics will be based on the approach developed in Task 3.1. A summary of these meetings will be provided to Staff to mark progress. At times these topical meetings may include Staff. The TASP Framework is a document with the following preliminary contents (subject to change based on findings in Task 3.1):

1. Economic Development Opportunities Areas
2. Incentives for Commercial Office and Affordable Housing Development
3. Projected Amount of Development
4. Public Realm Improvements and Precedents
5. Land Use Modelling
6. Address Affordable Housing
7. Scenario Building
8. Update Design Guidelines
9. Planning Policy Framework and Amendments
10. Commercial Retail Policy Framework
11. Parking Policy Framework
12. Circulation Planning
13. Infrastructure Analysis
14. Basic Infrastructure Program Amendment
15. Infrastructure Financing and Implementation

Consultants involved: All

Deliverable: Public TASP Framework Document to be posted on the Project Website and presented at a Public Meeting and City Council.

Task 3.5 TASP Update Open House

This Community Open House will occur shortly after City Council Meeting #2. Input and feedback on ideas will be collected through post-it comments and on comment cards to be included in the TASP Framework Development. The details of this will be provided in the Community Engagement Approach Memo.

Consultants involved: UF, M-Group

Deliverable: Materials for Public Meeting as described in the Community Engagement Approach Memo

Task 3.6 Private Stakeholder Meetings

The Team will prepare materials to engage private developers or other key stakeholders identified by the City and solicit input for the TASP Update and meet with VTA, Great Mall, and the City Community Development Roundtable at separate meetings, preferably scheduled closely together. The input gathered will be summarized and incorporated into the TASP Framework ideas.

Consultants involved: UF, M-Group, EPS

Task 3.7 Policy Update

The Team will produce a List of Proposed Amendments to the TASP and Zoning including justification for changes that will be presented to the City Council for Approval.

Consultants involved: UF, M-Group, LEX

Deliverable: List of proposed amendments to the TASP with explanation and justification

Task 3.8 Notice of Preparation of Supplemental EIR

ICF will prepare a draft Notice of Preparation (NOP) for review by the City. The NOP will meet the content requirements of CEQA Guidelines Section 15082. After receiving the City's comments, ICF will provide an NOP suitable for public release and submittal to the State Clearinghouse. ICF will also prepare the State Clearinghouse Notice of Completion (NOC) submittal form. We assume that the NOP review period will be the standard 30 days required by CEQA. We also assume that the City will help develop an appropriate distribution list, which ICF can review, and will be responsible for mailing the NOP and filing the NOP with the County Clerk. ICF will be responsible for filing the NOP with the State Clearinghouse.

Consultants involved: ICF

Phase 4: Draft TASP Update

The Team's intended approach is to write the TASP Update in a way that is easy for developers and business owners to understand and Staff implement. The aim of this update is to have objective standards in place that are based on site test scenarios and market evaluation and carry forward the character determined for typologies within the plan. The plan will rely on graphics to explain, identify, and attract developers and to make the plan as focused and concise as possible.

4.1 Administrative Draft TASP Update

The Team will develop a comprehensive administrative draft TASP Update based on the TASP Update Approach and TASP Framework Document. The plan will be in Microsoft Word with images in a separate PDF. The plan will be approximately 100 pages long. Urban Field will respond to two rounds of consolidated edits from City Staff.

4.2 Public Draft TASP Update

The Team will review Staff comments and prepare a Public Draft TASP Update. This plan will be beautifully designed and placed into layout with rich illustrations and concise, compelling text. The Public Draft TASP Update will be presented in full layout with graphics and text placed together in a PDF format. The Team will respond to two rounds of consolidated edits from City Staff.

Phase 5: TASP Update Completion

This phase includes the adoption of the TASP Update and the completion of the EIR.

5.1 City Council Meetings

There will be two City Council Meetings (or Work Sessions) in 2021, following the first three in 2020.

- Meeting #4 will occur after the 2021 Council has convened. Material will be presented to refresh incumbents and introduce newly elected Council Members to the project and to lay the groundwork for the Final Meeting.
- Meeting #5 will be the Final Council Meeting for the TASP Update. Prior to this meeting, staff will present to the Planning Commission for a final review and recommendation.

A presentation will be prepared for each meeting by the Consultant Team. The Team can also provide comments on the Staff Report and prepare handouts prior to the meeting, if needed.

Consultants involved: UF, M-Group and (optionally) subconsultants as needed by topic

Deliverable: Presentations for each Meeting

5.2 Final TASP Update

The Team will review public comments and prepare a Final TASP Update. The Final TASP Update will be presented in PDF Format.

Notes about the Environmental Impact Report

The most important part of the environmental process for this project will be to determine what type of CEQA document will be most appropriate for the proposed project. Per CEQA Guidelines Section 15163, a Supplemental EIR is appropriate where: 1) changes to the project, changes to the circumstances under which the project is undertaken, or new information of substantial importance (which was not, and could not have been known when the EIR was certified) would result in major revisions to the previous EIR due to new or more significant impacts; and 2) only “minor additions or changes” to the previous EIR would be necessary to make the previous EIR adequate in the context of the changed circumstances. As part of project initiation ICF would consult with the project team, including the City as the CEQA lead agency, to determine whether these parameters would be met for the proposed project. If, as the project becomes more defined, it is determined that proposed updates to the Plan would result in substantial revisions to prior EIR, ICF would recommend preparation of a Subsequent, as opposed to a Supplemental EIR.

This Scope of Work preliminarily assumes a Supplemental EIR, though the environmental level of effort may be expanded to allow for a Subsequent EIR at the City’s request. Given what we know about the project to date, and recognizing that the RFP contemplates a Supplemental EIR, the following scope of work proposes preparation of a supplement to the 2008 Final Environmental Impact Report (2008 EIR) for the Milpitas Transit Area Specific Plan (TASP) to assess and mitigate, as feasible, the impacts of the proposed Transit Area Specific Plan Update (project).

If it is determined during the planning phase that the TASP Update would result in major changes to the 2008 EIR, such as new impact analyses related to the annexation of significant new areas of land into the TASP, or the addition of substantial amounts of new residential development, ICF would recommend preparation of a Subsequent EIR rather than a Supplemental EIR. Per CEQA Guidelines Section 15163, a supplement to an EIR may be distinguished from a Subsequent EIR by the following: A supplement is intended to augment a previously certified EIR to the extent necessary to address the conditions described in CEQA Guidelines Section 15162 and to examine mitigation and project alternatives accordingly. A Subsequent EIR, on the other hand, is a complete EIR which focuses on the conditions described in Section 15162. If it is determined based on the extent of proposed changes to the project that a Subsequent EIR is required, ICF would request approval of an amendment to our scope and budget.

As supported by recent CEQA case law, the Supplemental EIR analysis would focus on the potential impacts of the changes to the project and would not reassess the project as a whole. Accordingly, ICF will examine the revised project in the context of the 2008 EIR focusing on what, if any, changes to environmental impacts would result from the revisions to the project. In doing so, ICF will use an Initial-Study-like checklist designed for use on subsequent environmental reviews.

Preliminary, ICF anticipates that air quality, greenhouse gases, noise, and transportation will need to be evaluated in the Supplemental EIR. Many of the other CEQA Appendix G topics, such as hydrology and water quality and hazards and hazardous materials, are anticipated to be “scoped out” during the preparation of the checklist. Should it be determined, during the course of preparing the checklist, that the project may result in significant impacts in other topic areas, these topics would need to be evaluated in the EIR and an amended scope and cost would be provided.

In Phase 5, the EIR Tasks are the following:

Task 5.3 Prepare Project Description

ICF will develop a CEQA project description based on the proposed Plan updates, including any new policies, land use changes, and changes to the Plan boundaries. ICF will submit an Administrative Draft Project Description and a Draft Project Description for review by the City and will prepare a Final Project Description based on comments received.

Deliverables: ICF will complete the following deliverables:

Administrative Draft Project Description in MS Word and PDF formats

Draft Project Description in MS Word and PDF formats

Final Project Description in MS Word and PDF formats

Task 5.4: Prepare CEQA Checklist

ICF will prepare an environmental checklist analyzing whether the differences between the TASP (original project) and the updated TASP (revised project) would result in any new or substantially more severe impacts not disclosed in the 2008 EIR. The checklist will examine each of the CEQA environmental topics included in Appendix G of the CEQA Guidelines. A supplemental document is focused on the newly proposed action. It upgrades the program EIR as

needed to disclose the new or more severe impacts that could result from the later action. It does not re-open the analyses in the program EIR that are not related to the new or more severe impacts implicated in the action. Accordingly, each topic will be discussed to the extent that it would be affected by the changes to the project examined in the 2008 EIR. The analysis will assume that all pertinent mitigation measures identified in the 2008 EIR will continue to apply to the revised project.

This scope of work assumes the following with regard to the TASP update. Should any of these assumptions change throughout the course of developing and refining the Plan update, ICF's scope of work and cost estimate would need to be revisited and potentially adjusted.

- The majority of the residential development proposed in the Plan area has already occurred. Some additional residential capacity is expected, and the required CEQA effort will be matched with the number of units ultimately proposed in the Plan update.
- The TASP update will be focused primarily on expanding the capacity of the remaining underdeveloped acreage within the Plan area, evaluating infrastructure and open space needs and opportunities, and identifying opportunities to activate and enhance the public realm. For the purpose of this scope, we assume that a modest expansion of the Plan area may be required to achieve these objectives, and that new land annexed into the Plan area would be contiguous to the Plan area and similar in character to the existing Plan area.
- Land use densities may be increased within the existing Plan boundary and/or within an expanded TASP area.
- Existing TASP policies, 2008 EIR mitigation measures, City of Milpitas General Plan policies, and Midtown Specific Plan policies would remain applicable to all proposed development within the existing Plan area and within any areas annexed into the Plan area as a result of the Plan update as a means of avoiding or minimizing environmental impacts. If the application of additional or updated policies is required to reduce the severity of potential environmental impacts resulting from the Plan update, ICF will assist with the development of such policies, or will increase the scope of work to analyze new policies.
- Subsequent CEQA compliance may be required for future specific projects proposed under the updated TASP, if the application of Plan/General Plan policies or 2008 EIR mitigation measures cannot adequately minimize potential impacts.

If the TASP does not result in significant population growth within the Plan area or substantially increase the buildout potential of the area, the proposed Plan updates will not change the conclusions of the following topics as analyzed in the 2008 EIR, and the below topics will be scoped out. The checklist will include a summary of the conclusions in the 2008 EIR and will explain if there is a substantial change in the prior conclusions. Based on additional discussions with the project team regarding the extent of Plan updates, it may be determined that these topics may require additional analysis, or that additional topics can be scoped out from detailed review.

Biological Resources. The 2008 EIR concluded that impacts on biological resources would be less than significant with implementation of General Plan and Specific Plan policies, and it is assumed that these policies would be applied to development under the TASP update to avoid or minimize impacts. If the Plan area is expanded to include areas of potential biological sensitivity, ICF biologists will conduct online research and review existing environmental documents to identify existing biological resources (e.g., vegetation and wildlife habitat) and assess habitat suitability for special-status plant and wildlife species. If sensitive resources are found, ICF will amend our scope and budget to conduct a site visit and document existing conditions by photographing examples of dominant land cover types and potentially sensitive habitat features (e.g., trees or shrubs that provide habitat for nesting birds) and recording field notes digitally or on paper. Focused studies (e.g., formal wetland delineation or tree inventory) will not be conducted. If potentially significant impacts would occur that were not analyzed in the 2008 EIR and that could not be avoided or minimized through implementation of existing or updated Plan policies, this topic may need to be considered in the EIR, and a scope and budget amendment would be required.

Cultural Resources. The 2008 EIR concluded that impacts on cultural resources would be less than significant with implementation of General Plan and Specific Plan policies, and it is assumed that these policies would be applied to development under the TASP update to avoid or minimize impacts. If the Plan area is expanded, ICF would conduct a records search of the Northwest Information Center (NWIC) to identify any previously recorded cultural resources and cultural resource investigations within the revised project area, and review geologic maps and historic topographic maps to determine which landforms within the program area have the potential for as-yet undocumented buried archaeological resources in order to determine whether impacts to archeological resources are likely to occur. It is expected that existing policies, which require that a qualified archeologist be on site during any ground disturbing activities, and that construction would be halted, and a mitigation plan developed in the event that resources are discovered, would sufficiently reduce impacts to archeological resources or human remains. However, if potential impacts cannot be reduced through the implementation of such policies, this topic may need to be considered in the EIR, and a scope and budget amendment would be required.

ICF would also perform outreach to the Native American Heritage Commission (NAHC) and request that the NAHC review their sacred lands file and provide a list of Native American individuals who may have knowledge of cultural resources within the expanded Plan area. If requested by the client, this coordination can be performed in a way that would assist with satisfying the project's AB-52 and SB-18 consultation obligations. If tribal cultural resources are identified in areas where the Plan update would contemplate new development, ICF will assist the City in drafting Plan policies to avoid or minimize such impacts. If potential impacts cannot be reduced through the implementation of such policies, this topic may need to be considered in the EIR, and a scope and budget amendment would be required.

Similarly, if historic-age properties are present in the expanded Plan area, and could be impacted by the TASP update, ICF will assist the City in drafting Plan policies for the plan to avoid or minimize such impacts. If potential impacts cannot be reduced through the implementation of

such policies, this topic may need to be considered in the EIR, and a scope and budget amendment would be required.

Land Use. While changes in zoning and land use designations may occur as a part of the TASP update, it is not anticipated that these changes would result in new or more significant environmental impacts as compared to the project analyzed in the 2008 EIR. The Plan update would not physically divide an existing community, and it is not likely that any changes to the Plan would cause a significant impact due to a conflict with existing plans or policies. If the updates include an increase in the density of proposed development such that the overall development capacity of the existing Plan area is substantially increased, or if the Plan area is substantially expanded, this topic may need to be analyzed in the EIR.

Population and Housing. We do not anticipate that the types of changes proposed to the TASP are likely to displace existing housing. If little additional residential development is proposed, the TASP is not likely to result in a change in the analysis beyond what was evaluated in 2008. If the updates include an increase in the density of proposed development or increased overall development capacity of the existing Plan area, or if the Plan area is substantially expanded, this topic may need to be analyzed in the EIR.

Geology, Soils, and Paleontology. As noted above, this scope assumes that existing TASP policies, General Plan policies, and 2008 EIR mitigation measures would be applied within the existing and/or expanded TASP area to avoid or minimize impacts to the extent feasible. Additionally, while the TASP Area may be expanded with the proposed Plan update, developers of opportunity sites that are added to the Area boundaries may complete their own environmental review, including required design-level geotechnical studies during the development of the construction plans and associated recommendations. As noted in the 2008 EIR, a site-specific geotechnical investigation would be required for any site located within a seismic hazard zone.

Paleontology impacts were analyzed in the 2008 EIR in the Cultural Resources section, and impacts were determined to be less than significant with implementation of TASP policy 5.32, which requires that development projects involving ground displacement to include a requirement for monitoring by a qualified paleontologist. Such impacts also would be considered on a project specific basis for proposed development on parcels added to the Plan area. Further, construction of the revised project would adhere to the effective California Building Standards Code and City building permit requirements. Any new technical information related to geology and soils will be incorporated into the checklist.

Hydrology and Water Quality. According to the 2008 EIR analysis, hydrology and water quality impacts within the TASP area would be less than significant with implementation of General Plan and TASP policies requiring conformance with existing regulatory requirements, including, but not limited to, implementation of National Pollutant Discharge Elimination System requirements, preparation of Stormwater Pollution Prevention Plans (where required), implementation of Best Management Practices for new developments, and compliance with FEMA standards. It is assumed that development under the TASP update would be required to adhere to these requirements such that new or more significant impacts related to hydrology and

water quality would not occur. Therefore, impacts are unlikely to be greater than anticipated in the 2008 EIR.

Hazards and Hazardous Materials. It is expected that all existing General Plan, Specific Plan, and Midtown Specific Plan policies regarding safety and hazardous materials would be carried over to any future development within the Plan area, including any parcels included in the TASP Area as a result of Plan updates. No changes to the conclusions in the 2008 EIR are expected.

Energy. Energy use was analyzed as part of the Greenhouse Gases and Climate Change section of the 2008 EIR. This analysis will assess the project's potential to result in the wasteful, inefficient, or unnecessary consumption of energy resources. As part of the 2018 CEQA Guidelines Update energy was incorporated into the Appendix G Checklist; as such, energy impacts would be assessed as a standalone topic in the Checklist. The 2008 EIR concluded that implementation of TASP policies energy impacts would be less than significant. It is expected that these policies would be applied to any new development under the updated TASP, and that this impact is expected to be less than significant.

Public Services. The 2008 EIR concluded that impacts to public services, including police, fire, schools, and parks would be less than significant with implementation of General Plan, Midtown Specific Plan, and TASP policies. It is assumed that if the Plan update does not include a substantial increase in population, that the revised project would have impacts related to public services similar to the project analyzed in the 2008 EIR . Further, given that the TASP update could include expanded or enhanced open space opportunities, the Plan could ultimately result in a benefit with regard to parks and open space. If the updates include an increase in the density of proposed development or increased overall development capacity of the existing Plan area, or if the Plan area is substantially expanded, this topic may need to be analyzed in the EIR.

Utilities. The 2008 EIR concluded that impacts to utilities would be less than significant with implementation of TASP policies. These policies prescribed numerous areawide improvements that would enable and benefit future development within the Plan area. It is assumed that because the Plan update may not include a substantial increase in population, that the revised project would have impacts related to utilities similar to the project analyzed in the 2008 EIR . However, it is noted that if the TASP update contemplates significant additional development or substantial changes to previously proposed infrastructure improvements, this topic may need to be evaluated in the EIR.

Visual Resources. The 2008 EIR concluded that impacts to visual resources would be less than significant with implementation of General Plan, Midtown Specific Plan, and TASP policies. These policies include, but are not limited to, requirements that future projects with the TASP area to include design features to underground utilities, provide landscaping enhancements and setbacks, retain tree corridors, and minimize light and glare impacts. It is expected that all of these policies would be applicable to new development in the existing or expanded TASP area, and that impacts under the TASP update would be the same or similar to the impacts identified in the 2008 EIR. Further, Plan updates are expected to result in improvements to the public realm. No changes to the conclusions in the 2008 EIR are expected.

Wildfire. Wildfire is a new topic added to the CEQA Guidelines Appendix G Checklist at the end of 2018. Given the location of the project, we expect that this topic can be scoped out of the Supplemental EIR.

Deliverables: ICF will complete the following deliverables: Administrative Draft, Draft, and Final checklist in MS Word and PDF formats

5.5 Prepare Administrative Draft Supplemental EIR

ICF will prepare an administrative Draft Supplemental EIR that will evaluate the potential environmental impacts that could result from implementation of the revised project. In accordance with CEQA Guidelines Section 15162, the Supplemental Draft EIR will analyze whether modifications to the original project analyzed in the 2008 EIR , or changes in circumstances that were not known at the time of the 2008 EIR, would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Prior to beginning the analyses, ICF will provide the City with a suggested outline for review and comment.

ICF will provide the City with one electronic copy of the administrative Draft Supplemental EIR for review and comment. This scope assumes that reviewer comments will be consolidated (with any internally conflicting comments resolved). If the analysis or comments on the administrative Draft Supplemental EIR result in the need for additional analysis, a contract amendment may be required.

The administrative Draft Supplemental EIR will include the following components.

Executive Summary

This section will include a summary of the revised project that describes the 2008 EIR, the original project, and the modifications to the original project that have been proposed since certification of the 2008 EIR. This section will also summarize the Draft Supplemental EIR findings and the mitigation measures and alternatives considered. ICF will use tables where possible in order to present the information in a brief and informative manner.

Introduction

This section will discuss the CEQA process, including public review and comment, and the purpose of the Supplemental EIR. The introduction will also summarize the scoping process, including NOP comments.

This scope of work and cost estimate assumes that the resource topics listed below will not be analyzed in detail in the Draft Supplemental EIR. The Draft Supplemental EIR will include a summary of impacts that have been “scoped out” from further evaluation (via the CEQA Checklist described above), which will explain why the revised project would not result in new or greater significant with regard to the following resource topics:

- Biological Resources
- Cultural Resources
- Land Use

- Population and Housing
- Geology, Soils, and Paleontology
- Hydrology and Water Quality
- Hazards and Hazardous Materials
- Energy
- Public Services (including Parks)
- Utilities
- Visual Resources
- Wildfire

Project Description: This section will include the Project Description prepared as part of Task 3.

Environmental Setting and Impact Analysis

This section will describe the environmental and regulatory settings and provide an impact analysis for each of the resource areas described below. The impact analyses will include significance criteria, methodology, impact determination with significance conclusions, and mitigation measures, if required. In accordance with Sections 15162 and 15163 of the CEQA Guidelines, the determination of impact significance will be based on whether the modifications to the project or changes in circumstances would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects as compared to the analysis done in the Program EIR. The preliminary scope of analysis for each resource topic addressed in the Draft Supplemental EIR is presented below.

5.5.1 Transportation

Because traffic and transportation conditions have changed substantially since the 2008 EIR was prepared, and the TASP update may include changes to circulation within the existing and potentially expanded Plan area, a transportation impact analysis (TIS), and Supplemental EIR section summarizing the findings of the TIS, is recommended. In addition to the changes in circumstances within and surrounding the Plan area, and the potential for changes resulting from the TASP update, there have been regulatory updates since certification of the 2008 EIR that affect the way in which transportation impacts are analyzed under CEQA. More specifically, the 2018 CEQA Guidelines Update changed the metric for assessing transportation impacts from Level of Service (LOS) to Vehicle Miles Traveled (VMT). W-Trans will prepare the TIS for the revised project, including an analysis of VMT for the TASP update, and ICF will summarize the findings of the TIS in the Supplemental EIR.

Consultants involved: ICF, WTrans

5.5.2 Air Quality and Greenhouse Gas Emissions

The 2008 EIR evaluated air quality and greenhouse gas (GHG) impacts from the buildout of the proposed plan. While the Final EIR concluded that construction and operational emissions could result in significant air quality impacts, there have been substantial changes to air quality and GHG regulations and analytical methodologies since issuance of the Final EIR in 2008.

Additionally, since the transportation analysis would be revised, we recommend revising the Air

Quality and GHG analyses accordingly to reflect the redistribution of land uses and associated trips, as well as the potential for increased development density under the TASP update.

Accordingly, ICF proposes to quantify criteria pollutant and GHG emissions from buildout of the TASP Update (if changed compared to the original Plan), which may include 170 acres of the remaining undeveloped land within the TASP and some adjacent parcels. ICF will use the Bay Area Air Quality Management District's (BAAQMD) most recent CEQA Air Quality Guidelines to evaluate project impacts. We will describe the air quality thresholds used to identify significant impacts based on the BAAQMD's Guidelines and guidance provided by BAAQMD staff, as well as the methodology used to estimate emissions.

Where appropriate, ICF will incorporate relevant environmental setting information from the 2008 EIR into the SEIR for the TASP Update. The air quality and GHG chapters will present all new or updated regulations and background data as it applies to the project. The impact analysis for the TASP Update will assess the following:

Short-term emissions from construction: Construction-related emissions resulting from development under the TASP Update will be evaluated qualitatively. We will identify construction-related mitigation measures recommended by the BAAQMD to reduce air quality impacts from future development. This scope does not include a quantitative construction emissions analysis. If sufficient information is available to perform a quantitative assessment, and consultation with the City indicates the need to perform such an analysis, a scope and budget amendment will be required to reflect the additional effort.

Long-term emissions from operation: ICF will quantify criteria pollutant and GHG emissions from motor vehicles using vehicle miles traveled (VMT) data from the traffic consultant and the EMFAC model. Operational emissions associated with building area sources, energy and water consumption, waste generation, stationary sources (if any), and land use changes will be estimated using the CalEEMod model and land use data from the City. The analysis will quantify, to the extent feasible, emissions reductions achieved by current and new TASP sustainability policies. Emissions will be quantified under existing conditions and future buildout with and without the TASP Update. Mitigation to reduce operational criteria pollutant and GHG emissions from future development under the TASP Update will be proposed and analyzed, as necessary.

Operational air quality impacts associated with growth under the TASP Update will be evaluated by determining whether it is consistent with the most recently adopted Clean Air Plan prepared by BAAQMD, as well as with their recommended analysis thresholds. While the City has a climate action plan (CAP), it is only qualified for CEQA tiering to 2020 and therefore cannot be used to evaluate GHG emissions beyond the 2020 planning horizon. Likewise, BAAQMD's current GHG thresholds are derived from the state's 2020 GHG reduction goal, and therefore may not be appropriate to evaluate emissions generated after 2020. BAAQMD is currently working on an update to their CEQA Guidelines, which is expected to include GHG thresholds to project-level GHG emissions relative to the state's post-2020 GHG reduction targets. Because the regulatory environment for GHG emissions is frequently evolving, the significant threshold(s) for evaluating long-term GHG impacts for the TASP Update will be finalized at the

time of analysis preparation. The ultimate GHG threshold(s) will be selected in close coordination with BAAQMD and consider all applicable case law and air district and expert agency guidance.

Health effects from criteria pollutant emissions: Potential regional and localized health effects from increased criteria pollutant emissions generated during construction and operations will be generally described, as well as modeling limitations of quantitatively correlating project-specific emissions to specific health consequences. Should models or guidance become available that enables a quantitative correlation of project emissions to health impacts, a scope and budget amendment would be required.

Localized carbon monoxide hot spots: ICF will review traffic data from the transportation analysis for affected intersections and the BAAQMD's CO screening criteria to determine the need for localized CO modeling and evaluate CO impacts. If a hotspot analysis is determined to be necessary, ICF will use peak hour traffic volumes from the traffic consultant, the CALINE4 dispersion model, and the latest version of EMFAC to estimate CO concentrations at up to three (3) locations. CO impacts will be assessed comparing estimated CO concentrations to the ambient air quality standards.

Toxic air contaminants: The primary toxic air contaminants (TAC) of concern are asbestos and diesel particulate matter (DPM). The potential for asbestos from demolition will be qualitatively assessed and compliance with BCAQMD asbestos rules will be discussed. ICF will also qualitatively evaluate potential health risks associated with the TASP Update, which includes an evaluation of exposure of sensitive receptors to existing and planned sources of TACs, including DPM. ICF will identify and discuss goals, policies, and objectives to minimize potential health-related impacts. This scope does not include a dispersion modeling analysis of TAC. If sufficient information is available to perform a quantitative health risk assessment, and consultation with City indicates the need to perform such an analysis, a scope and budget amendment will be required to reflect the additional effort.

Odors: ICF will identify locations of potential odor sources and identify any goals, policies, and objectives to minimize potential odor impacts.

Consistency with Climate Change Regulations: ICF will qualitatively evaluate the project's consistency with state and local climate change plans and regulations, including the City's CAP, Senate Bill (SB) 32, and Executive Order B-55-18.

5.5.3 Noise

The Milpitas Transit Area Specific Plan (TASP) Final EIR evaluated noise impacts from buildout of the proposed plan. Assuming that under the TASP update land use densities may be reconfigured or increased, and trip distribution may be altered such that new or increased noise and vibration impacts could occur, ICF proposes to prepare a noise and vibration impact analysis for the TASP update.

The analysis will employ standard noise and vibration modeling techniques consistent with the requirements of the City of Milpitas General Plan Noise Element and the City's noise ordinance. Where appropriate, ICF will incorporate relevant environmental setting information from the

2008 Final EIR into the SEIR for the TASP Update. Similarly, components of the 2008 Final EIR analysis that are applicable to the analysis of that TASP Update will also be incorporated into the impact analysis section, where appropriate. The impact analysis for the TASP Update will assess the following:

- Exposure of existing noise sensitive land uses noise and vibration associated with demolition and construction activity for future development under the Plan (qualitative analysis).
- Exposure of existing noise sensitive land uses to changes in traffic noise resulting from Plan implementation (quantitative analysis).
- Exposure of existing noise sensitive land uses to operational noise from future projects under the Plan, as applicable (qualitative analysis).

In the regulatory setting, the discussion will focus on City of Milpitas noise standards and guidance. Other noise and/or vibration criteria, such as guidance from the California Department of Transportation (Caltrans) the Federal Transit Administration (FTA), may also be summarized in the document, as appropriate.

In the existing conditions discussion, ICF will generally identify existing sources of noise in the Plan area, along with existing noise-sensitive in the Plan area. Existing noise conditions in the Project area will be described based on information in the City of Milpitas General Plan Noise Element and based on noise monitoring and traffic noise modeling. Although the 2008 Final EIR included existing noise measurements in the Plan area, these are from 2005. Due to the age of these measurements, it is assumed that they are no longer representative of the existing noise environment in the project area. Existing noise levels in the Plan area will be characterized based on noise monitoring to be conducted at selected locations, as follows:

- Short-term (15 minutes or less) noise monitoring will be conducted at up to three locations in the Plan area.
- Continuous long-term monitoring (24 hours or more) will be conducted at up to three locations in the Project area.

Operational traffic noise will be evaluated at up to a maximum of 20 roadway segments under the following conditions using the Federal Highway Administration Traffic Noise Model (TNM), and average annual daily traffic data to be provided by the Project traffic consultant:

- Existing
- Existing plus Project
- Cumulative
- Cumulative plus Project

Traffic noise will be evaluated in terms of how project-related traffic noise increases may affect existing noise sensitive land uses in the Plan area. Traffic noise impacts on future sensitive land uses will also be evaluated if there is a substantial exacerbation of existing traffic noise levels. It is assumed that traffic data provided by the traffic consultant will include average annual daily traffic (ADT) volumes, posted speeds, and heavy truck percentages for each roadway segment

analyzed. Non-traffic operational noise resulting from plan implementation will be analyzed qualitatively based on operational data provided by the City. Construction noise and vibration will be evaluated qualitatively, as was done in the current version of the TASP, based on standard construction noise and vibration modeling methods and general information about the types of projects expected to be developed under the Plan.

CEQA significance thresholds will be defined based on City of Milpitas noise standards and other applicable noise standards, as appropriate. The significance of noise impacts will be assessed based on predicted noise exposures and the defined CEQA significance thresholds. Where significant noise impacts are identified, Policies from the current version of the TASP will be applied to reduce potential impacts. Where policies would not reduce impacts to less-than-significant-levels, mitigation to reduce impacts to a less than significant level (where feasible and reasonable) will be identified. Noise mitigation will be described at a level of detail appropriate for environmental review and not at a design level of detail. Any noise reduction measures identified in these studies will be required to be incorporated into individual projects developed under the Plan, where applicable. Depending on the identification of potentially significant impacts, future individual projects under the Plan may be required to perform additional noise analyses.

Alternatives: This section will evaluate a reasonable range of alternatives, in accordance with CEQA. This scope of work and cost estimate assume that up to three alternatives will be analyzed, including the required no-project alternative.

Other CEQA Considerations: This section will discuss cumulative impacts and other CEQA requirements.

Supplemental EIR Preparers and References

This section will identify the people that prepared the Draft Supplemental EIR and the references cited in the Draft Supplemental EIR.

Deliverables: ICF will complete the following deliverables: Administrative Draft Supplemental EIR and Appendices (electronic Word and PDF files and up to five (5) hard copies)

5.6 Prepare Screen check and Public Draft Supplemental EIR

Once the City has provided comments on the Administrative Draft Supplemental EIR, ICF will review the comments and make the appropriate revisions. ICF will prepare a Screencheck version of the public Draft Supplemental EIR for a final review by the City prior to release. ICF will then make any final revisions as directed by the City and prepare the Public Draft Supplemental EIR. We will provide the City with a PDF of the public review Draft Supplemental EIR that is suitable for reproduction and for posting on the City's website.

Additionally, ICF will provide the City with a draft Notice of Availability (NOA). This scope assumes that the City will be responsible for distribution and additional public notice. CEQA requires that notice be provided by one of the following methods: publication in a newspaper of general circulation, posting notice on- and off-site, or direct mailing to all property owners and occupants of properties adjoining the project site.

ICF will prepare and deliver 15 copies of the public Draft Supplemental EIR and a Notice of Completion form to the State Clearinghouse for distribution to state agencies. The copies will consist of 15 printed copies of the Executive Summary and 15 electronic copies of the full Draft Supplemental EIR on CDs.

Deliverables: ICF will complete the following deliverables:

Screencheck version of the Public Draft Supplemental EIR (electronic Word and PDF files)

Public Draft Supplemental EIR (electronic Word files and PDF suitable for reproduction and posting on the City's website, and up to ten (10) printed copies as requested by the City)

Notice of Availability (electronic Word and PDF files)

5.7 Respond to Comments, Prepare Final Supplemental EIR, and Complete Administrative Record

Responses to Comments

ICF will review the comments and discuss the comments and appropriate revisions with City staff. It is anticipated a conference call will suffice to discuss comments, but ICF staff can meet with City staff if requested.

ICF will prepare draft written responses to the comments received on the public Draft Supplemental EIR. We will provide these for review by the City and incorporate the City's revisions, if any, into the responses for the Final Supplemental EIR.

Administrative Final Supplemental EIR and Public Final Supplemental EIR

The Final Supplemental EIR will include the following sections: Introduction; Executive Summary table (revised version of impacts and mitigation measures table from the Draft Supplemental EIR; comments and written responses; an errata containing any revisions to the text of the Draft Supplemental EIR made in response to comments; and references. If a public meeting is held during the public review period of the Draft Supplemental EIR and verbal comments are accepted, ICF will arrange to have a court reporter present.

ICF will prepare an administrative draft of the Final Supplemental EIR for the City's review and comment. We will revise the administrative version in accordance with the City's direction and prepare a Screen check Final Supplemental EIR. The Screen check Final Supplemental EIR will then be revised to reflect any comments, and a Public Final Supplemental EIR suitable for certification by the City Council will be prepared.

Mitigation Monitoring or Reporting Program

ICF will prepare a mitigation monitoring or reporting program (MMRP). The MMRP will be prepared in tabular format, listing each mitigation measure identified in the Supplemental EIR, the time period for implementation, implementation responsibility, and monitoring responsibility. The MMRP will be developed with input from City staff to determine appropriate responsible parties. ICF will provide a draft version of each MMRP to the City for review and will incorporate any requested revisions prior to completing the final versions.

Administrative Record

ICF will compile the Administrative Record by assembling background documents, relevant e-mail records, correspondence, and/or telephone notes that are cited in the Supplemental EIR. Prior to the publication of the EIR, ICF will submit the Administrative Record for the project to the City on a CD or DVD to retain for the City's records.

Deliverables: ICF will complete the following deliverables:

- Administrative Final Supplemental EIR (electronic Word and PDF files and up to printed copies as requested by the City)
- Screen check Final Supplemental EIR (electronic Word and PDF files and up to printed copies as requested by the City)
- Public Final Supplemental EIR (electronic Word files and PDF suitable for reproduction and posting on the City's website, and up to ten (10) printed copies as requested by the City)
- Draft and Final MMRPs (electronic Word and PDF files and printed copies as requested by the City)
- One electronic copy on CD or DVD of the Administrative Record, to be submitted to the City for filing.

5.8: Findings and Notice of Determination

Findings

ICF will draft findings pursuant to CEQA Guidelines Section 15091. This will enable the City to take actions on the revised project (and adopt a Statement of Overriding Considerations, if needed) based on the environmental clearance provided by the Final Supplemental EIR.

Notice of Determination

ICF will prepare the Notice of Determination (NOD) after project approval and will file the NOD with the State Clearinghouse. This scope assumes that the City will file the NOD with the County Clerk and will provide a check with the necessary California Department of Fish and Wildlife and County Clerk filing fees.

Deliverables: ICF will complete the following deliverables:

- *Draft and Final Findings*
- *Draft and Final NOD*

For the purpose of the EIR, ICF will manage the associated tasks and maintain communication with City staff and the entire project team. ICF project management will be responsible for coordination activities, will maintain QA/QC requirements for document preparation, and will monitor schedule and performance for all work tasks. Project management subtasks also include maintaining internal communications among ICF, with City staff, and other team members, through emails and frequent phone contact, as well as the preparation of all correspondence. The Project Manager will coordinate internal staff, project guidance, and analysis criteria. ICF team members will attend and participate in meetings as needed. This scope assumes ICF's attendance at two team meetings and two public hearings.

Task 5.9 EIR Certification

The final Task in the TASP Update is the EIR Certification. The Final Plan will be posted on the City Website alongside the completed EIR.

Optional Tasks

Optional Task 1: Project Review/ Additional Private Stakeholder Meetings

In order to stick to the plan, we anticipate a continued advocacy for the vision, elements, and guidelines for the plan. The Team offers design review of incoming applications in the TASP Area to ensure a high level of quality and design consistent with TASP Update.

Project reviews could happen at any time. For the TASP Update, it is possible to review past or current projects before the end of Phase 3 to incorporate lessons learned into design guidelines. If after, we can continue to advocate for better design.

Scope and Billing Assumptions

The following assumptions were used to develop the scope of work and associated budget:

- The service will be billed on a “Percent Complete by Task” basis.
- Meetings will be scheduled back-to-back where possible to ensure travel efficiency
- All document comments from the City will be consolidated for each document, meaning that all comments will be delivered on one copy of the document, and comments will be screened in order to ensure there is no conflicting direction
- The City will provide up-to-date GIS data on parcels in and surrounding the plan area
- The City will be responsible for scheduling and noticing each meeting, though Urban Field will assist with strategy and noticing materials for public meetings.
- The City will be responsible for printing all materials with the exception of large-scale posters, which Urban Field will produce as necessary for meetings if requested by the City.

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant.

Phase 1: Kickoff, Visioning and Project Management		
1.1	Project Kickoff Meeting and Tour	
1.2	Check in Meetings/Calls (2x/month)	
1.3	Community Engagement Approach Meeting/Memo	
1.4	Project Management	
1.5	Project Website Development and Updates	
	Subtotal	\$45,000
Phase 2: Existing of Conditions		
2.1	Stakeholder Interviews	
2.2	Online Public Survey	
2.3	Developer/Stakeholder Forum (attend 3 meetings)	
2.4	Existing Conditions Report	
	Subtotal	\$70,000
Phase 3: TASP Framework		
3.1	TASP Framework Strategy Session	
3.2	City Council/Planning Commission Meetings (3 total in Phase 3)	
3.3	TASP Update Community Meeting	
3.4	Development of TASP Framework	
3.5	TASP Update Open House	
3.6	Private Stakeholder Meetings	
3.7	Policy Update	
3.8	EIR Notice of Preparation	
	Subtotal	\$190,000
Phase 4: Draft TASP Update		
4.1	Administrative Draft TASP Update	
4.2	Public Draft TASP Update	
	Subtotal	\$40,000
Phase 5: TASP Update Completion		
5.1	City Council Meetings (2 total in Phase 5)	
5.2	Final TASP Update	
5.3	EIR Project Description	
5.4	CEQA Checklist	

5.5	Admin Draft EIR	
5.6	Screen check and Public Draft EIR	
	^{5.7} Record Respond to Comments, Prepare final Supplemental EIR and Complete Administrative	
5.8	Findings and Notice of Determination	
5.9	EIR Certification	
	Subtotal	\$180,000
	Subtotal of Fees	\$525,000
Other		
6.1	Reimbursables	\$15,000
	Subtotal	\$540,000

EXHIBIT C - Activity Schedule

MILPITAS TRANSIT AREA SPECIFIC PLAN UPDATE 2020																			
URBAN FIELD PROCESS SCHEDULE 1.13.20																			
PHASE 1: Kickoff			PHASE 2: Existing Conditions			PHASE 3: TASP Framework			PHASE 4: Draft TASP Update		PHASE 5: TASP Update Completion								
MEETINGS AND MILESTONES																			
<ul style="list-style-type: none"> Kickoff, Tour and Project Brainstorming Staff/Consultant Check-in Calls (2x month, as needed) 			<ul style="list-style-type: none"> Staff Council Interviews Developer/Stakeholder Meeting Green Mall VTA Developers Roundtable 			<ul style="list-style-type: none"> TASP Framework Strategy Session (2 days - Staff and Consultants) Policy Tools - Zoning Placemaking and Physical Improvements Infrastructure Opportunities and Constraints Development Scenarios Mobility Study Ideas for Implementation 			<ul style="list-style-type: none"> Staff TASP Update Meeting Staff TASP Update Meeting 		<ul style="list-style-type: none"> Staff TASP Update Meeting 	<ul style="list-style-type: none"> Staff TASP Update Meeting 	<ul style="list-style-type: none"> Staff/Consultant Check-in Calls 						
DELIVERABLES																			
<ul style="list-style-type: none"> Community Engagement Approach (Coordination with PR) Build Project Website 			<ul style="list-style-type: none"> Existing Conditions Report Presentation Analysis of the 2008/2011 TASP Process for updating the plan Market Analysis Updates Land Use and Public Infrastructure Comparison of prior and current conditions 			<ul style="list-style-type: none"> Initial TASP Framework Ideas Development of TASP Framework Ideas Project Website Post-Update: Major Ideas 			<ul style="list-style-type: none"> TASP Framework 		<ul style="list-style-type: none"> Policy Update Project Website Update: Post Framework 	<ul style="list-style-type: none"> Admin Draft TASP Update Public Draft TASP Update Project Website Update: Post-Draft 	<ul style="list-style-type: none"> Final TASP Project Website Update: Post Final Plan and Draft EIR Project Website Update: Post EIR and Final Plan on City Site 						
EIR																			
February 2020			March			April			May		June	July	August	September	October	November	December	January 2021	April 2021
<ul style="list-style-type: none"> EIR Notice of Preparation and Scoping Meeting Draft EIR EIR Completion 																			

EXHIBIT “D”

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.**

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 combined single limit for bodily injury and property damage.

Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

(If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Builder's Risk (Course of Construction):

Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Contractor's or Consultant's Pollution Legal Liability:

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Cyber Liability Insurance

___ Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor or Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

- ___ Bid Bond
- ___ Performance Bond
- ___ Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X Additional Insured Status and Primary/Non-Contributory Language:

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an

endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

___ **Loss Payee Status – Builder's Risk/Course of Construction Insurance (applicable to Construction Contracts only)**

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

X **Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X **Waiver of Subrogation:**

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

___ **Completed Operations**

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention

or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.