

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE  
CITY OF MILPITAS AND RAIMI & ASSOCIATES, INC.**

This Agreement is made and entered into as of \_\_\_\_\_ (“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 **Raimi & Associates, Inc.**, a California corporation with its principal place of business at **1900 Addison Street, Berkeley, CA 94704** (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:

**CONSULTANT SERVICES FOR 2023-2031 HOUSING ELEMENT** (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 **Four Hundred Thirty-One Thousand Seven Hundred Ten Dollars and Zero Cents (\$431,710.00)**. 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.

The term of this Agreement shall be from **the date first written above to June 30, 2024**, 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.

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 negligent 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. Notwithstanding anything to the contrary, the Consultant shall not be obligated to indemnify the City for City's sole negligence or willful misconduct.

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 **Chris Sensenig** 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: Sharon Goei, Director of Building Safety and Housing

CONSULTANT:

Raimi & Associates, Inc.

1900 Addison Street, Suite 200

Berkeley, Ca 94704

Attn: Simran Malhotra, Principal and Vice President

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 RAIMI & ASSOCIATES, INC.**

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

**CITY OF MILPITAS**

**RAIMI & ASSOCIATES, INC.**

*Approved By:*

\_\_\_\_\_  
Steven G. McHarris, City Manager

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

*Approved As To Form:*

\_\_\_\_\_  
Title

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

\_\_\_\_\_  
Date

*Approved:*

\_\_\_\_\_  
Lauren Lai, CPA, MPA  
Finance Director/Risk Manager

*Approved As To Content:*

\_\_\_\_\_  
Sharon Goei, Director of Building Safety and  
Housing

## EXHIBIT A

### Scope of Services

#### City of Milpitas Housing Element Scope of Services

---

The following is the scope of services for the Raimi + Associates (R+A) team for the City of Milpitas Housing Element. The consultant team includes the following firms in addition to R+A: Veronica Tam + Associates (VTA) and Rincon Consultants, Inc. (Rincon). The scope of services defines the specific tasks and roles and responsibilities of each firm relative to the overall project. The budget for the scope of work is included in Exhibit B and draft schedule is included in Exhibit C. The level of effort for each task and by each consultant team member is included in the budget.

#### Task 1. Project Management and Coordination

This task covers communication and coordination between the consultant, City staff, and additional consultants including meetings, phone conferences, email exchanges, and other communications to ensure timely delivery and adoption of the City's updated Housing Element. The R+A team will meet with staff on a regular interval and employ strategies or practices to ensure clear and timely communication and effective coordination among City departments, the Santa Clara County Planning Collaborative consultant, the Metro and Gateway Specific Plan update consultants, the City's Housing Overlay Zone consultants, the City's Assessment of Fair Housing consultant, and others as needed. The R+A team will coordinate with California HCD over the course of the project and timely HCD review of administrative drafts in fall 2022. City staff will help refine the project schedule to accommodate public hearings.

##### **Task 1.1: Project Kick-Off Meeting**

The R+A team will hold a half-day kick-off meeting to initiate a joint Housing Element and Housing Overlay Zone process.

##### **Task 1.2: Project Meetings and Coordination**

The R+A team will hold regular phone calls to coordinate with the City about the project. This task also covers "informal" communication via email and phone up to the maximum budget. This will include monthly status reports on the project.

##### **Task 1.3: Project Workplan**

R+A will develop a project work plan broken out by major scope task that specifies lead and supporting team members, key work elements, major deliverables, due dates, required City actions, and task status. The Work Plan will be a living document, updated quarterly throughout the Housing Element and Housing Overlay Zone process.

##### ***Task 1 Deliverables:***

- Secure cloud-based document sharing solution for the project team.
- Agendas and meeting notes for kick-off and regular project management meetings
- Project workplan

## Task 2. Background Review and Housing Needs

### **Task 2.1: Background Review**

Working closely with City staff and using most recent Annual Progress Report, the R+A team will review the current Housing Element and identify Milpitas' success in accomplishing/implementing the identified goals, policies, and programs and provide explanations and updates where goals, policies, or programs are in progress, have been abandoned, or have not proven effective. The R+A team will also review the City's new General Plan for any housing-related policies, the Transit Area Specific Plan (Metro Plan), the Milpitas Midtown Specific Plan (Gateway Plan), the Zoning Code, the Affordable Housing Ordinance, the forthcoming Assessment of Fair Housing, and other related documents/policies as appropriate.

### **Task 2.2: Housing and Special Housing Needs**

VTA will weave together data and information to create a clear and coherent narrative about housing need in the city. Data sources will include:

- ABAG's Regional Housing Technical Assistance Program
- ABAG/REAP funded County Collaboratives
- The city's forthcoming Assessment of Fair Housing
- Other data sources

The Housing and Special Housing Needs assessment will tell a story highlighting key takeaways using a mix of text, tables, and graphics. Detailed charts and analysis will be referenced in the appendix to maximize readability.

### **Task 2.3: Preliminary Sites Inventory**

The Housing Element must identify adequate sites with appropriate densities and development standards to accommodate its Regional Housing Needs Allocation (RHNA). R+A will develop a preliminary sites inventory with the City. Inventory sites may include:

- Existing sites in the 5th Cycle RHNA that remain available
- Trends in Accessory Dwelling Unit (ADU) production
- Recent entitlements that can be credited toward the RHNA
- Specific Plans and opportunity sites, including the Metro Specific Plan area, Midtown/Gateway Specific Plan area, Milpitas Town Center for mixed use development, four areas with the Neighborhood Commercial Mixed-Use designations, and other vacant/underutilized sites

R+A will coordinate closely with both specific plan updates as these plans cover the City's largest growth areas and may identify additional sites. R+A will start early to synchronize with both specific plan updates and to ensure adequate time to consider potential areas for rezoning or other changes to development standards needed to achieve the RHNA.

R+A, working closely with the City's Fair Housing Assessment consultant, will review the preliminary inventory for consistency with Affirmatively Furthering Fair Housing.

***Deliverables:***

- Admin Draft and Final Background Review report in Word and PDF formats.
- Admin Draft and Final Housing and Special Housing Needs assessment in Word and PDF formats
- Preliminary Sites Inventory in PPT format with Excel spreadsheet

**Task 3. Community Outreach and Engagement**

Building on insights gained from the Housing and Special Needs Housing assessment and the Fair Housing Assessment, the project team will develop a program that ensures broad and meaningful inclusion particularly for hard-to-reach groups, including but not limited to low-income households, households with limited English proficiency, and special needs populations. The project team will codesign and implement the outreach process in partnership with the City and local community-based organizations as appropriate.

The outreach strategy includes a variety of participatory activities and events and will identify how these options effectively engage stakeholders where they already congregate and through organizations they already know and trust. Outreach content will be relatable for stakeholders whose primary language is English, Spanish, Vietnamese, Traditional Chinese, and Simplified Chinese through a thoughtful mix of document translation, interpretation and other methods suggested by local community-based organizations.

Outreach would begin in winter 2022 and continue throughout the process. The engagement process includes both virtual and small in-person meetings as City policies allow.

**Task 3.1: Community Engagement Strategy**

The R+A team will co-design an outreach strategy with the City, local community-based organizations, and community leaders to meaningfully engage a diverse and broad range of stakeholders. At a minimum, the Community Engagement Strategy will clearly identify the range of outreach tools and platforms and the timing and responsibilities related to each. The Community Engagement Strategy will:

- Introduce the overall outreach process and engagement tools.
- Identify numerous outreach targets overall and for specific stakeholder groups, such as youth and native Spanish speakers, using a “sampling plan.”
- Outline project goals and objectives.
- Identify outreach and communications responsibilities, and the engagement schedule relative to key dates and events in the community.
- Provide an overview of interest groups, stakeholders, key advisors and members of the advisory committee, and the format of future meetings.
- Establish methods for communicating with City staff and stakeholders.

As part of this task, the R+A team will create a 2-page project fact sheet and FAQs. The project website should have an automated feature where participants can add their names to a project contact list.

### **Task 3.2: Project Website**

R+A will prepare an interactive project website that allows for clear two-way communication and the common thread throughout the engagement process. The website will connect the community to project updates and deliverables, upcoming events, and meeting summaries. The site will include an interactive component to encourage the community to share their stories, complete surveys, or participate in interactive activities. Our team will regularly update the website and work with the City to expand existing social media and discussion forums.

### **Task 3.3: Stakeholder Meetings**

The R+A team will conduct up to ten (10) one-hour stakeholder meetings or interviews. Stakeholders will be identified with staff and may include City Council members, Planning Commission members, advocacy organizations, developers and major property owners, and community leaders. R+A will prepare a brief memorandum summarizing the results of the stakeholder interviews.

### **Task 3.4: Online Surveys**

At key points during the process, R+A will prepare up to three (3) online surveys using SurveyMonkey or other online survey platform to obtain feedback on the Housing Element. The surveys will be available through a link on the project website. R+A will provide a technical memo with the topline survey results; a detailed survey report is not included.

### **Task 3.5: Community Meetings**

At key points during the process, the R+A team will organize up to three (3) community workshops (virtual or in person). These are expected to be evening or weekend meetings that last approximately two hours. Each workshop will include an opening presentation followed by interactive exercises. To gather additional community feedback in parallel with every community workshop, our team will post workshop questions and materials online using the project website as defined in Task 3.4.

Our team will develop the workshop format, prepare the agenda, prepare relevant materials, facilitate the workshop (lead facilitator and 1-2 assistants), and provide summary notes documenting input and identifying common discussion themes. Our team will provide an outreach flyer for each meeting that can be distributed via email and through existing City channels.

### **Task 3.6: Pop-Up Meetings**

R+A will facilitate up to five (5) “pop-up” workshops or “intercept” meetings at popular locations and well-attended events in Milpitas. The team will prepare materials for the pop-up meetings. The R+A team will attend the pop-up events and City staff can attend additional events as needed during each phase.

### **Task 3.7: Newsletters and Other Outreach Materials**

R+A will work with City staff to share regular updates via text or email with stakeholders involved in the process. R+A will adapt, and supplement outreach materials, newsletters, and collateral provided by the Planning Collaborative for dissemination via text, email, and social media.

***Deliverables:***

- Draft and Final Community Engagement Strategy
- Housing Element Fact Sheet
- FAQs for the project website
- Regularly updated and dedicated project webpage
- Stakeholder interview summary
- Workshop meeting materials and summary
- Pop-up meeting materials and summary
- Coordination with the City’s project manager and Public Information Officer for the creation of collateral and social media posts.

**Task 4. Housing Element Development**

**Task 4.1: Housing Constraints Analysis**

Working closely with City staff, R+A will identify potential and actual governmental and nongovernmental constraints for the preservation, protection, or production of housing across income levels within the city. This analysis will include on-the-ground knowledge from City staff and cross-jurisdictional comparisons provided by ABAG. It will include write-ups of typical countywide non-governmental constraints, including community opposition to housing, cost of construction, limited availability of land and other topics. R+A will summarize the Housing Constraints assessment as a draft Housing Element Chapter for City staff review.

**Task 4.2: Sites Inventory**

R+A will prepare all sections of the sites inventory and back-up documentation demonstrating how Milpitas will satisfy its RHNA obligations in each income category. This includes identifying assumptions and evidence to support them, evaluating sites for feasibility, determining site capacity (per State law), analyzing potential policy strategies to increase site capacity, and inputting all required information into HCD’s required format. R+A will summarize the Sites Inventory as a draft Housing Element Appendix for City staff review.

**Task 4.3: Goals, Policies, Programs and Quantified Objectives**

VTA will prepare goals, policies, programs, and quantified objectives to include in the Housing Element to ensure compliance with State law and effective response to the housing needs, constraints and key priorities identified through the update process. This task includes ensuring responsiveness to priorities articulated through the community engagement process as well as ensuring internal consistency with other elements of the newly adopted General Plan and two Specific Plans. This task will include identification of other General Plan policy updates or revisions needed to ensure consistency. This task should integrate relevant goals and actions

from the Assessment of Fair Housing which will be prepared by a separate consultant. VTA will summarize the Housing Plan as a draft Housing Element chapter for City staff review.

**Task 4.4: Admin Draft Housing Element**

Based on the feedback provided on Tasks 4.1 – 4.3, the R+A team will prepare and submit a full Administrative Draft Housing Element for City staff review. City staff will review the Admin Draft Housing Element and provide a single set of comments.

**Task 4.5: Public Review Draft Housing Element**

Based on feedback from City staff on the Administrative Draft, the R+A team will prepare a Public Review Draft for public review and comment at public community meetings. The Public Review Draft will be succinct and graphically designed and formatted so it is easy for the public to understand and accessible for persons with disabilities as a hard or soft copy.

**Task 4.6: Planning Commission and City Council Study Sessions**

The R+A team will attend up to three study sessions with the Planning Commission, City Council Housing Subcommittee, and/or City Council to review the Public Draft Housing Element. The R+A team will prepare a brief PowerPoint presentation summarizing the Housing Element. Staff will prepare the staff report, which will be reviewed by the R+A team.

**Task 4.7: HCD Review Draft Housing Element**

Based on input from the public meetings, the R+A team will work with City staff to prepare an HCD Review Draft Housing Element.

**Task 4.8: Final Housing Element**

The R+A team will work closely with HCD and City staff to respond to any comments, and to produce a Final Housing Element for public hearings by the Planning Commission (for recommendation) and Council (for adoption). The scope assumes only minor, editorial changes will be needed to finalize the document. Our team will prepare and transfer all relevant materials to the City.

**Task 4.9: Planning Commission and City Council Hearings**

The R+A team will attend up to three (3) hearings with the Planning Commission, the City Council Housing Subcommittee, and City Council to recommend and adopt the Public Draft Housing Element. The R+A team will prepare a brief PowerPoint presentation summarizing the Housing Element. Staff will prepare the staff report, which will be reviewed by the R+A team.

***Deliverables:***

- Draft Housing Constraints Chapter in Word and PDF formats
- Draft Sites Inventory in Word, PDF, and Excel formats, including a fully populated HCD site inventory spreadsheet
- Draft Goals, Policies, Programs and Quantified Objectives in Word and PDF formats
- Admin Draft, Public Draft, HCD Review Draft, and Final Housing Element in Word and PDF formats
- Brief presentation materials for study sessions and public hearings

## Task 5. CEQA Documentation

Rincon recommends a streamlined approach to the Housing Element, one that takes advantage of the City's recently adopted General Plan and its associated environmental impact report (EIR). As these planning documents were adopted and certified earlier this year, we believe the most efficient approach to complying with the California Environmental Quality Act (CEQA) is to prepare an EIR Addendum tiering from the General Plan EIR. Per CEQA Guidelines Section 15164, an addendum may be prepared if some changes or additions are necessary, but none of the conditions have occurred that would trigger a subsequent or supplemental document (CEQA Guidelines Sections 15162 and 15163). This is the circumstance here, since the General Plan's projected growth would incorporate the anticipated growth and changes related to the Housing Element Update and associated Regional Housing Needs Allocation (RHNA) numbers. To that end, we have prepared a scope of work to achieve CEQA compliance using the most efficient pathway possible. Although Senate Bill (SB) 743 requires an analysis of vehicle miles travelled (VMT) for transportation impacts, if the growth assumed in the EIR is greater than or equal to what the RHNA increase is, impacts would be the same as previously analyzed and no additional analysis would be required at this time. If rezoning or upzoning is needed to satisfy RHNA needs, these impacts would have been evaluated as part of the General Plan land use buildout numbers and accordingly also evaluated in the General Plan Final EIR.

As for specific additional evaluation of individual developments with the Housing Opportunity Zones, these are best held off until detailed programming and design features are known. It may be that many or all such future developments are also either compliant with the General Plan EIR, or would otherwise be subject to new Addendum documentation, depending on the ultimate consistency.

Rincon will analyze, update as necessary, and edit existing information to provide an EIR Addendum that complies with current CEQA requirements and identifies those General Plan EIR mitigation measures that are required based on the impacts identified in the analysis.

The EIR Addendum will be prepared in accordance with CEQA Guidelines Section 15164. Rincon will review information from the certified General Plan EIR and will reference verified information from this document in the Addendum. The Addendum will supplement the General Plan EIR analysis with new or updated analysis as necessary and appropriate.

The Addendum will largely rely on existing environmental documentation and technical studies prepared for the City of Milpitas planning area, especially the General Plan Final EIR, and the technical studies completed for that project. This work program outlines the steps that would be needed to adhere to state environmental documentation requirements.

### **Task 5.1: Native American Tribal Consultation**

We will assist the City conduct government-to-government tribal consultation in accordance with Assembly Bill 52 of 2014 (AB 52) and Senate Bill 18 of 2004 (SB 18). We will prepare the AB 52- and SB 18-specific letters to be placed on City letterhead; preparing and submitting a Native American Heritage Commission Sacred Lands File SB 18 request; and preparing a



tracking sheet and instructions to be provided to the City. The instructions will include details regarding schedule and timelines associated with AB 52 and SB 18 to ensure timely consultation.

### **Task 5.2: Project Description**

As part of this task, we will gather any additional materials available for the proposed Housing Element update, including relevant planning documents, any technical analyses prepared by the City, and recent environmental documentation prepared for projects in or near the project area. Rincon will then prepare a detailed project description, including tabular and graphic information, for review by the City and project team. This review is critical since it forms the basis for environmental evaluation under CEQA. The project description will provide a detailed summary of the proposed Housing Element Update. The project description will be based on additional information to be provided by the City and project team. Textual, tabular, and graphic presentation will be used as necessary to facilitate a thorough understanding of the proposed project. Tables and graphics will be prepared to illustrate clearly the changes proposed by the Housing Element Update. The project description will include:

- A thorough explanation of proposed changes to the Housing Element
- A discussion of planned development characteristics at buildout
- Features that have been incorporated into the project to minimize potential environmental or land use conflicts, if any
- Tables illustrating project characteristics and the degree of change from existing conditions and currently adopted Zoning Code and land use designations
- Supporting graphics

We will provide the City with an electronic version of the draft project description for review. Upon City approval of the draft project description, we will prepare the Administrative Draft Addendum. This task includes all components necessary to complete the environmental impact analysis.

### **Task 5.3: Administrative Draft Addendum**

This task includes all the steps necessary to complete an Administrative Draft Addendum for the proposed Housing Element Update. The Addendum would contain all sections required pursuant to CEQA. In accordance with CEQA Guidelines Section 15164, the Addendum will include only the information necessary to make the previous EIR adequately apply to the project in the changed situation. As declared in CEQA Guidelines Section 15151:

*An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible.*

The Addendum will include an introductory section, project description, environmental impact evaluation, and conclusion. The introductory section will provide a brief discussion of the project history, explanation of the relationship of the Addendum to the previous General Plan EIR analysis, and a description of the required contents and applicability of preparing an Addendum. The project description will describe and document the specific modifications to the proposed project and will include descriptions and graphics depicting the Housing Opportunity Zones, as

provided by the City of Milpitas. The environmental impact evaluation section of the Addendum will assess how the proposed project modifications would have new or different environmental impacts or a different degree of impact than those previously presented in the certified General Plan EIR. To the extent possible, Rincon will incorporate information from existing environmental and planning documents that are applicable to the project area and project. Although the impact assessment will address all issue areas discussed in the EIR, it is anticipated that key issues will include air quality, population and housing, public services and recreation, transportation, and utilities and service systems. The conclusion section of the Addendum will summarize the impacts analysis and reiterate the applicability of an Addendum pursuant to occurrence of none of the conditions specified in Section 15162 of the CEQA Guidelines requiring a Subsequent EIR. Key Issues:

- Air Quality and Greenhouse Gas Emissions. We will prepare this section in accordance with Bay Area Air Quality Management District (BAAQMD) Guidelines. We will analyze both temporary construction effects and long-term regional effects. We will compare growth potential under the General Plan EIR to the Housing Element. This analysis will also consider the project's potential contribution to cumulative impacts related to greenhouse gas (GHG) emissions and climate change. An overview of the current regulatory framework regarding GHGs/climate change including SB 32, AB 32, SB 97, and SB 375, as well as adopted amendments to the CEQA Guidelines, will be described.
- Population and Housing. It is not anticipated that the Housing Element would displace people or housing. Therefore, this section will focus on a comparison of General Plan population and housing estimates to the Housing Element estimate.
- Public Services and Recreation. We will address potential impacts relating to police protection and fire protection services, schools, and parks and recreational facilities in comparison to General Plan EIR.
- Transportation. We assume the transportation analysis performed for the General Plan complies with current vehicle-miles-travelled methodologies and will be sufficient for the Housing Element EIR update, and that no new transportation modeling will be required.
- Utilities and Service Systems. We will compare impacts on water supply and service systems, wastewater conveyance and treatment systems, and solid waste collection and disposal systems from the General Plan EIR to the Housing Element.

Rincon will submit electronic copies of the Administrative Draft Addendum (in Microsoft Word and Adobe Acrobat), along with associated appendices, to the City and project team for review and comment. This task includes one round of review and revisions.

#### **Task 5.4: Final Addendum**

Upon receiving one consolidated set of City comments on the Administrative Draft Addendum, we will prepare a Final Addendum for adoption. We will provide one electronic version for the City's use. The full administrative CEQA record will be sent to the City at this time.

There are no special public notification or review requirements for an addendum, other than the standard noticing related to the Housing Element itself. The City will present the Addendum along with the Housing Element for City Council approval at the same time. Once the Addendum is adopted, we will assist City staff with the filing of the Notice of Determination with the County and the State Clearinghouse, if desired. We assume the City will have its receipt from filing the California Department of Fish & Wildlife (CDFW) fees at the time the General Plan EIR was certified. Otherwise, additional CDFW fees could be required.

## Task 6. Environmental Justice Analysis

### **Task 6.1: Environmental Justice Screening Analysis**

R+A will conduct an EJ Screening Analysis involving a 3-step process derived from State guidance. Based on our experience and in-house technical expertise, we will use the following approach: 1) Use of CalEnviroScreen index scores alone; 2) Use of State low-income thresholds and American Community Survey data to identify low-income areas and then cross-referencing those areas with individual pollution factors identified in the CalEnviroScreen; and 3) Identification and use of local and supplementary data sources to describe other potential health inequities and environmental injustices across topics, such as access to healthy food, physical activity, safe and sanitary housing. The result will be a summary PPT with data and results.

### **Task 6.2: Additional Policy Development**

During this task, R+A will work closely with the City to build off the existing Community Health and Wellness Element and to identify potential policy solutions to the specific issues identified in the process. This task will involve identifying policies in the existing General Plan and drafting new policies for the General Plan, specifically the Housing Element. The policies would be reviewed with the broader community at an online workshop/focus group and then refined based on feedback during the Housing Element process.

#### ***Deliverables:***

- Draft and Final PPT with Environmental Justice Screening Analysis
- Draft and Final Additional Environmental Justice policies for the General Plan in Word format

#### Scope of Work Assumptions

The following is a list of assumptions for the Housing Element update.

- The level of effort for each task is limited to the general number of hours for each task listed in the budget spreadsheet. R+A team members may reallocate hours between tasks if individual tasks are completed in less time than anticipated.
- All data and information provided by the City will be assumed to be correct and up to date. The consultant team is not responsible for out-of-date or inaccurate information.
- All studies that the team will prepare are identified in the scope of work. Any studies, tasks, deliverables or reports not specifically identified are assumed to be not included.

- City review time for workshop materials and meeting materials will be approximately one week. City review of major products will be between two and four weeks, depending on the product and other responsible of City staff.
- All comments on major project deliverables will be provided as a single set of non-conflicting and actionable comments.
- The City will retain a separate consultant to review the sites inventory per the Assessment of Fair Housing which will consider displacement risk, racial and economic segregation, and other factors. The consultant will prepare all components of the Fair Housing Assessment in accordance with HCD guidelines.
- City staff will serve as partners to the consultant team in the update process and will be responsible for, at minimum, the following activities:
  - Writing staff reports
  - Logistics of all meetings
  - Costs of meeting facilities and supplemental costs of meetings and workshops, including but not limited to, food, childcare, and high-cost supplies
  - Printing copies of documents (the team will provide electronic versions and City staff will be responsible for printing)
  - Assisting with outreach to inform the community about Housing Element events. This includes public notices, notices in newspapers, distributing meeting notices in public buildings, mailings, etc.
  - Other tasks as identified during the process.

#### Optional Task

##### **Rezoning**

A portion of the Housing Element capacity will be provided through two specific plan area updates, with additional sites throughout the city that may require independent rezoning for consistency with the new General Plan. Based on the sites analyses, the project team will work with City staff to identify potential areas for rezoning, if necessary. Since the need for this task is not yet known, the team did not provide an estimated budget for completing the work.

## **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. This is a time-and-materials Agreement.

[CONTINUES ON FOLLOWING PAGE]

**Exhibit B: Housing Element Cost Estimate**

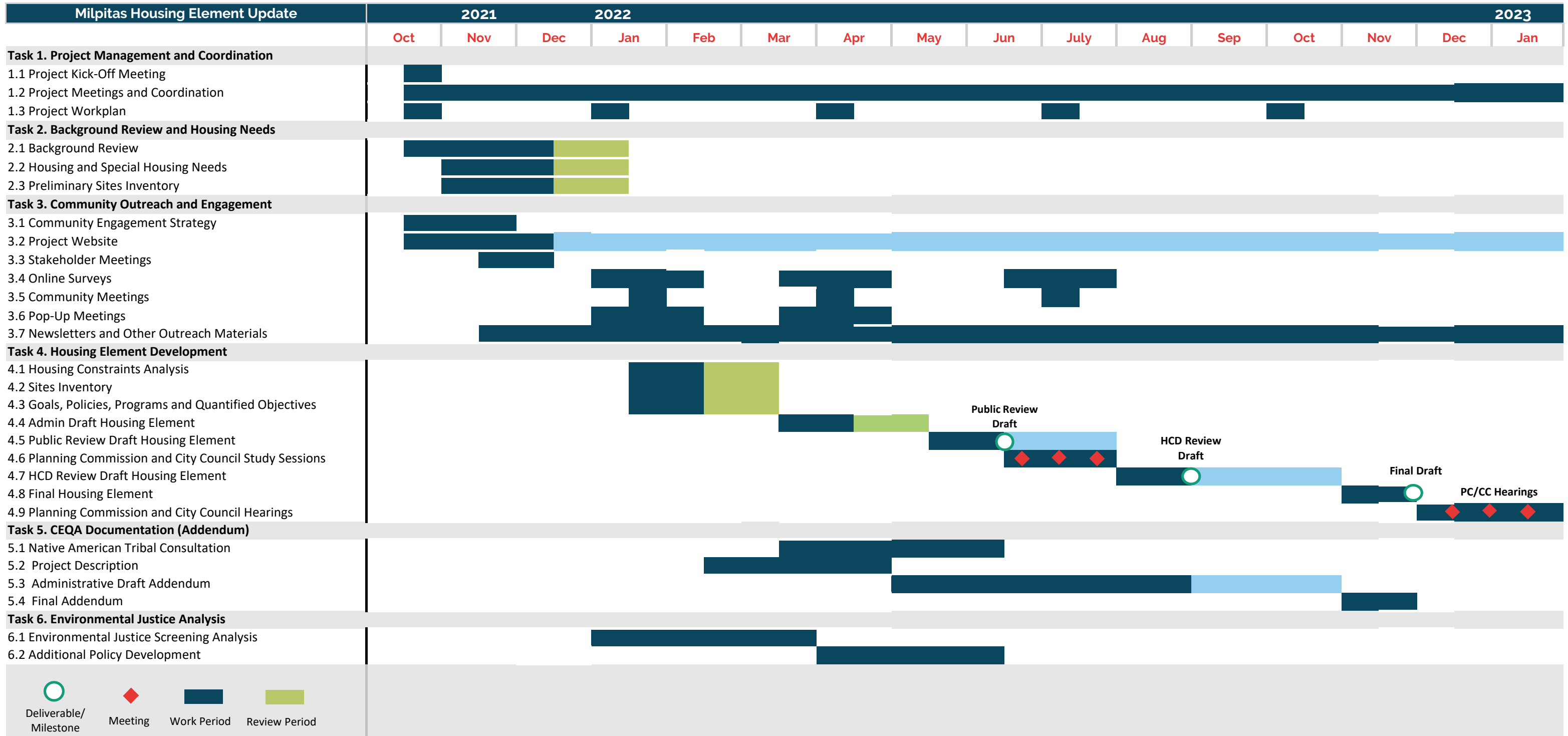
Hours per Task	Raimi + Associates				Veronica Tam & Associates			Rincon Consultants					Labor Cost Per Task
	Principal (Yurkovich)	Intermediate Planner (Tandon, Reynoso, Wu)	Planner	Graphics (Ledezma)	Tam	Bueno	Power	Director (Kremin)	Suprvsng Planner (Dix)	Title (Meschi)	GIS (Klatt)	Admin (Todd)	
<b>Task 1. Project Management and Coordination</b>													
1.1 Project Kick-Off Meeting	8	16	8	8	3	3	3						\$7,630
1.2 Project Meetings and Coordination	60	60			20	4	4	4	8	-		6	\$32,530
1.3 Project Workplan	16	16			2								\$6,880
<b>Subtotal Task 1</b>	<b>84</b>	<b>92</b>	<b>8</b>	<b>8</b>	<b>25</b>	<b>7</b>	<b>7</b>	<b>4</b>	<b>8</b>	<b>-</b>	<b>-</b>	<b>6</b>	<b>\$47,040</b>
<b>Task 2. Background Review and Housing Needs</b>													
2.1 Background Review	8	24			4		20						\$9,180
2.2 Housing and Special Housing Needs	8	8			8	40	40						\$14,840
2.3 Preliminary Sites Inventory	24	60	40		8								\$22,260
<b>Subtotal Task 2</b>	<b>40</b>	<b>92</b>	<b>40</b>	<b>-</b>	<b>20</b>	<b>40</b>	<b>60</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$46,280</b>
<b>Task 3. Community Outreach and Engagement</b>													
3.1 Community Engagement Strategy	16	24			2								\$8,200
3.2 Project Website	12	20		60									\$11,580
3.3 Stakeholder Meetings	20	20			8								\$9,700
3.4 Online Surveys	24	40	40		1								\$17,560
3.5 Community Meetings	28	100	60	60	20	10	10						\$42,620
3.6 Pop-Up Meetings	8	20	20	40									\$11,320
3.7 Newsletters and Other Outreach Materials	8	24	16	18									\$9,500
<b>Subtotal Task 3</b>	<b>116</b>	<b>248</b>	<b>136</b>	<b>178</b>	<b>31</b>	<b>10</b>	<b>10</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$110,480</b>
<b>Task 4. Housing Element Development</b>													
4.1 Housing Constraints Analysis	16	40	40		4								\$16,240
4.2 Sites Inventory	16	24	24		20								\$14,800
4.3 Goals, Policies, Programs and Quantified Objectives	8	8			16	8							\$7,440
4.4 Admin Draft Housing Element	16	32	40	40	16	40	40						\$30,920
4.5 Public Review Draft Housing Element	16	24		24	4	8	8						\$12,760
4.6 Planning Commission and City Council Study Sessions	24	24			18	6							\$14,070
4.7 HCD Review Draft Housing Element	16	16		24	2	4	4						\$10,040
4.8 Final Housing Element	16	24		24	12	4	4						\$13,360
4.9 Planning Commission and City Council Hearings	24	24			18	6							\$14,070
<b>Subtotal Task 4</b>	<b>136</b>	<b>176</b>	<b>64</b>	<b>112</b>	<b>106</b>	<b>76</b>	<b>56</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$117,460</b>
<b>Task 5. CEQA Documentation (Addendum)</b>													
5.1 Native American Tribal Consultation								4	8				\$2,720
5.2 Project Description	8							2		8	8		\$4,580
5.3 Administrative Draft Addendum								6	24	60			\$14,760
5.4 Final Addendum								2	12	20			\$5,780
<b>Subtotal Task 5</b>	<b>8</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>14</b>	<b>44</b>	<b>88</b>	<b>8</b>	<b>-</b>	<b>\$27,840</b>
<b>Task 6. Environmental Justice Analysis</b>													
6.1: Environmental Justice Screening Analysis	12	60		8									\$13,500
6.2: Additional Policy Development	12	24	16										\$8,840
<b>Subtotal Task 6</b>	<b>24</b>	<b>84</b>	<b>16</b>	<b>8</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$22,340</b>
<b>Total Hours</b>	<b>408</b>	<b>692</b>	<b>264</b>	<b>306</b>	<b>182</b>	<b>133</b>	<b>133</b>	<b>18</b>	<b>52</b>	<b>88</b>	<b>8</b>	<b>6</b>	
<b>Billing Rate</b>	<b>\$240</b>	<b>\$165</b>	<b>\$125</b>	<b>\$90</b>	<b>\$200</b>	<b>\$125</b>	<b>\$125</b>	<b>\$250</b>	<b>\$215</b>	<b>\$135</b>	<b>\$135</b>	<b>\$85</b>	
<b>Labor Cost</b>	<b>\$97,920</b>	<b>\$114,180</b>	<b>\$33,000</b>	<b>\$27,540</b>	<b>\$36,400</b>	<b>\$16,625</b>	<b>\$16,625</b>	<b>\$4,500</b>	<b>\$11,180</b>	<b>\$11,880</b>	<b>\$1,080</b>	<b>\$510</b>	
<b>Total Firm Labor Cost</b>				<b>\$272,640</b>			<b>\$69,650</b>					<b>\$29,150</b>	
<b>EXPENSES</b>													
Mileage and Travel Expenses, Website, Workshop				\$2,500			\$2,000						
Project/Sub Management (7%)				\$7,091									
Translation and Intpretation				\$20,000									
Community-Based Organization Stipends				\$20,000									
Office Expenses (Phone, Fax, Copies, etc.)				\$8,179								\$500	
<b>Total Expenses</b>				<b>\$57,770</b>			<b>2,000</b>					<b>500</b>	
<b>TOTAL PER FIRM</b>				<b>\$330,410</b>			<b>\$71,650</b>					<b>\$29,650</b>	
<b>GRAND TOTAL</b>				<b>\$431,710</b>									

**EXHIBIT C**  
**Activity Schedule**

The City anticipates completing the Objective Design Standards per the following schedule:

[CONTINUES ON FOLLOWING PAGE

# Exhibit C: Project Schedule





## 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):**

X 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:**

X 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.