

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND WEST YOST & ASSOCIATES**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and West Yost & Associates ("Consultant") as of February 3, 2009, in Milpitas, California.

AGREEMENT

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 16, 2009, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the usual and customary professional standards observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession.
- 1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant, and Consultant represents to the City that its work shall conform to the usual and customary professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel (including title and hourly charge rate) who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed \$159,521.00 for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consultant further represents that the amount of the compensation specified in this Section 2 shall be a guaranteed maximum price. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

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

- Serial identification of bills; ("Invoice #")
- The beginning and ending dates of the billing period;
- A Task Summary containing the City project name and number, purchase order number, Project Manager, original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- Consultant shall use the City's "Consultant Progress Payment" format specified in Exhibit D for invoice tracking and shall submit the form with each invoice.
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

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

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

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work. Consultant shall not perform extra work without specific written City approval.

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

2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B as "Other Direct" costs and shall not exceed one thousand nine hundred seventy-three dollars (\$1,973.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

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

2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The

City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

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

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

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

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

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

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the

Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on

the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

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

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

- 4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- 4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- 4.3.3 The policy must contain a cross liability clause.
- 4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:
 - a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

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

4.4 Requirements for All Policies.

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

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond,

guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

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

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

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consistent with California Civil Code Section 2782.8, Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the negligent or reckless acts or omissions or willful misconduct of Consultant or its employees, subcontractors, or agents for whom Consultant is legally liable. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements

required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.4. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any

subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that, if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement.

Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
 - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
 - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are

not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties. All work product submitted to the City pursuant to this Agreement shall be deemed a "work for hire". Upon submission of any work for hire pursuant to this Agreement, and acceptance by the City as complete, non-exclusive title to copyright of said work for hire shall transfer to the City. The compensation recited in Exhibit B shall be deemed to be sufficient consideration for said transfer of copyright.

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

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

Section 10 MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

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

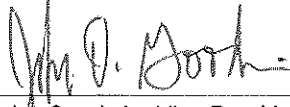
Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any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

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Ownership of Documents.** All documents developed or obtained by Consultant in the performance of the Agreement shall be deemed to be the property of the City.
- 10.10 **Contract Administration.** This Agreement shall be administered by Greg Armendariz, who is authorized to act for, and on behalf of City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.11 **Notices.**
Any written notice to Consultant shall be sent to:
John Goodwin
West Yost Associates
2020 Research Park Drive, Suite 100
Davis, CA 95618
- Any written notice to City shall be sent to:
Greg Armendariz, Public Works Director/City Engineer
455 East Calaveras Boulevard
Milpitas, California 95035
- 10.12 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.13 **Record Drawing.** At the end of construction, the consultant shall prepare a record drawing using the red-lined plans to be provided by the City. The record drawing shall incorporate all changes made during construction in the field to show the actual record of construction.
- 10.14 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.15 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager



John Goodwin, Vice President

ATTEST:

Mary Lavelle, City Clerk

68-0370826

Taxpayer Identification Number

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Greg Armendariz, Public Works Director/City Engineer

APPROVED:

Emma Karlen, Finance Director/Risk Manager

Attachments:

- Exhibit A: Scope of Services
- Exhibit B: Compensation Schedule, Personnel Rates
- Exhibit C: Insurance Coverage Documents
- Exhibit D: Consultant Progress Payment form
- Exhibit E: Invoice or Claim Declaration form

EXHIBIT A

SCOPE OF SERVICES

The work scope includes engineering services to complete the final design and provide bid period support services for the South Milpitas Water Line Replacement Project. The project includes replacement of approximately 4,800 linear feet of 16-inch water main, including laterals and related appurtenances in South Milpitas Boulevard between East Calaveras Boulevard and Yosemite Drive, and up to eight valve and/or fire hydrant replacements along Los Coches Street. There are several water sensitive customers supplied by this water main, and the design shall provide for less than 3 hour water disruption to water customers. In 2006 under a previous contract (previous Project No. 7098), West Yost Associates (Consultant) prepared design drawings and specifications for the water main replacement to a 90 percent completion level when the project was placed on hold. This scope of work will update the previous design documents to include Seismic design criteria and recommendations from the DSWA report dated May 2006, incorporate City staff comments, update permit requirements, prepare cost estimates, complete the project documents and provide bid services. This new scope will incorporate the Los Coches valve/fire hydrant replacement, which is currently under a separate Project No. 7084.

Task 1. Project Management

This task will include project management activities, including day-to-day administration, progress meetings and technical reviews.

Subtask 1.1—Project Administration. Monitor progress of individual tasks and coordinate completion of work products. Monitor and maintain task budgets and project schedule.

Subtask 1.2—Progress Meetings. Attend four design review meetings during the design phase with City staff to discuss and review progress and significant action items. The Consultant will prepare and submit meeting agendas and minutes. The Consultant will submit draft-meeting minutes within one week of the date of the meeting.

Subtask 1.3—Quality Control Reviews. Technical reviews of the plans and specifications will be conducted by the Principal-in-Charge, Project Manager, and a senior staff member not directly involved in the project. The reviews shall include constructability of the project.

Subtask 1.4—Project Schedule. Provide project schedule, which will include design and bidding milestones, in hard and electronic versions in Microsoft Project format. Schedule will be submitted at the first design meeting and will be updated and delivered with each progress meeting or as requested by the City. The goal is to complete contract documents (bid ready) by April 15, 2009.

Deliverables:

- *Meeting agendas, meeting minutes, project schedule updates.*

Task 2. Agency Coordination, Permitting and Public Outreach

This task will include coordination and permitting with City of Milpitas, the San Francisco Public Utilities Commission (Hetch Hetchy Water and Power), CALTRANS and Air Products. Permit fees, if required, will be paid by the City. CEQA processing will be performed by City staff. Consultants shall also ensure their project design is compliant with City, State, and Federal Storm Water Pollution Prevention and Erosion Control guidelines, and ensure the design can be constructed in conformance with these guidelines.

Subtask 2.1—City of Milpitas. Consultant will coordinate with the City of Milpitas to include City encroachment permit requirements in the Contract Documents. Encroachment permit for construction activities will be obtained by the Contractor through the City.

Subtask 2.2—San Francisco PUC (Hetch Hetchy Water and Power). Consultant will attend one meeting with SFPUC officials and will assist the City in preparation of permit applications for crossing the Hetch Hetchy water pipeline. Special provisions may be included in the design to maintain compliance with SFPUC easement requirements.

Subtask 2.3 CALTRANS. Some Caltrans traffic loops at Calaveras Boulevard will be disturbed during construction and a Caltrans encroachment permit will be necessary. Consultant will attend one meeting with Caltrans and prepare the encroachment permit applications for this work. A traffic handling plan is also required as part of the application. (The traffic plan will be part of the Subtask 4.6),

Subtask 2.4 Public Outreach. City staff will provide an updated water customer contact list. Consultant will prepare one appropriate letter/flyer for City's review to be sent to the water customers. Shutdown notifications will also be coordinated clearly in the plans and project specifications.

Deliverables:

- *Meeting minutes.*
- *Permit applications.*
- *Outreach letters/flyers*

Task 3. Geotechnical Investigation Update

The Consultant through their subconsultant, DCM GeoEngineers, had performed a geotechnical investigation for the previous project and prepared a draft geotechnical report.

This task will include review of existing documents, responding to City comments, and preparation of the final geotechnical report.

Subtask 3.1—Coordination with Final Design. The geotechnical engineer shall review the 95 percent Contract Documents and the City's liquefaction study, if available, and provide coordination between the geotechnical report and the Contract Documents.

Subtask 3.2—Final Geotechnical Report. A draft geotechnical engineering investigation report has been prepared with the previous project. After addressing comments from the City, the Consultant will finalize the report to be included in the Contract Documents.

Deliverables:

- *Five copies of the final geotechnical report.*

Task 4. Final Design Contract Documents

This task includes preparation of the final Contract Documents and cost estimates for the project. The Consultant had previously prepared contract documents to the 90 percent completion level under the previous contract. Five sets of plans and specifications will be submitted to the City for review at the 95 and 100 percent completion levels. The Consultant will address all comments generated from each of the 95% and 100% sets, including the remaining City staff comments on the 90% level, and submit one hardcopy set and one electronic set of final drawings and specifications to the City for bid advertisement and distribution.

Subtask 4.1—Utility Coordination. The Consultant shall update existing utility contact information. Preliminary drawings will be mailed to the utility companies following the 95 percent design submittal. The Consultant will contact Air Products and Chemicals, Inc. (Nitrogen gas line utility) and PG&E, as necessary, and update coordination requirements in the contract documents. No additional potholing is anticipated for this project.

Subtask 4.2—Corrosion Protection Design Services. The Consultant's subconsultant, V&A Consulting Engineers, had provided corrosion protection design services. V&A Consulting Engineers will review and update the plans and specifications for the 95 and 100 percent submittals. Attend one meeting with City and WYA staff, if required.

Subtask 4.3—Seismic Design Criteria. The Consultant will review the City's Seismic Improvements Strategic Plan (May 2006) and incorporate recommendations for Backbone Pipeline Design Criteria into the Contract Documents.

Subtask 4.4—Drawings. Drawings will be updated using Autodesk Autocad

software compatible up to 2009 version, and English Units of measurement. The design will include approximately 4,800 linear feet of 16-inch diameter water main and laterals, installed by open cut construction methods. The design drawings will be plotted on D size sheets at a scale of 1"=50' horizontal and 1" = 4' vertical plan and profiles and appropriately scaled details. Drawings at 1"=10' horizontal scale will be prepared showing details of connections to existing water line at all intersections, including but not limited to Los Coches Street, Turquoise Street, Topaz Street, Calaveras Blvd and Yosemite Drive. Standard details will be developed for the eight valve and/or fire hydrants to be replaced on Los Coches Street loop, which includes Topaz and Turquoise Street.

Subtask 4.5—Specifications. Specifications will be prepared in Microsoft Word format. Consultant will prepare technical specifications, notice inviting bids, instructions to bidders, bid schedule and supplementary general conditions based on City Standard Specifications. The City will provide updated front end documents including contract documents, general conditions and general requirements in Microsoft Word Format. The Consultant will review and edit updated front end documents and include appropriate cross references in contract documents.

Subtask 4.6 Traffic Control Plans. Consultant will attend two meetings with City's traffic engineer and prepare a traffic handling plan to reflect the different phases of the construction. The plans shall also coordinate with the water shutdown operations as necessary. The traffic plan will include the traffic handling plan required for the Caltrans encroachment permit. It is anticipated that up to 12 traffic control plan sheets will be required.

Subtask 4.7 Surveying. Consultant will provide any needed surveying to complete the necessary design data needed to accomplish the final plans. One day of field surveying is assumed.

Subtask 4.8—Cost Estimate. Consultant will develop updated construction cost estimates at the 95 and 100 percent design completion levels.

Deliverables:

- *Five sets of draft plans and specifications at 95 and 100 percent completion levels.*
- *One set of final plans and specifications for bid advertisement.*
- *One set of electronic drawing and specification files.*
- *Cost estimates at 95 and 100 percent completion levels.*
- *Traffic Control plans*

Task 5. Bid Period Services

The purpose of this task is to assist the City during the bidding phase of the Project. The City will advertise and distribute bid documents.

Subtask 5.1—Addenda. Consultant will prepare addenda during the bid period to be distributed by the City.

Subtask 5.2—Prebid Meeting, Bidder Inquiries, and Bid Evaluation. Consultant will conduct one prebid meeting and prepare the meeting minutes for distribution. All bid inquiries will be routed through the City. Consultant will provide support in answering bidder's technical questions during the bid period.

Deliverables:

- *Addenda, prebid meeting minutes, phone conversation records.*

COMPENSATION SCHEDULE, PERSONNEL AND RATES

Task	Personnel	Rate	Hours	Subtotal	Other	Subtotal	Material	Subtotal	Other	Subtotal	Subtotal	Subtotal
Task 1: Project Administration												
1.01	Project Administration	8										
1.02	Progress Meetings	12	16									
1.03	Quality Control Reviews	4	8									
1.04	Project Schedule	4	4									
	Subtotal, Task 1 (hours)	28	28	0	0	0	0	0	0	0	0	0
	Subtotal, Task 1 (\$)	\$ 6,048	\$ 4,732	\$ 3,760	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Task 2: Milpitas Encroachment Permit												
2.01	Milpitas Encroachment Permit	4	8									
2.02	SFPUC	4	12									
2.03	CALTRANS	8	32									
2.04	Public Outreach	4	12									
	Subtotal, Task 2 (hours)	20	64	16	0	0	0	0	0	0	0	0
	Subtotal, Task 2 (\$)	\$ 4,320	\$ 10,816	\$ 3,008	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Task 3: Coordination with Final Design												
3.01	Coordination with Final Design	1	4									
3.02	Final Geotechnical Report	1	2									
	Subtotal, Task 3 (hours)	2	6	0	0	0	0	0	0	0	0	0
	Subtotal, Task 3 (\$)	\$ 432	\$ 1,014	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Task 4: Utility Coordination												
4.01	Utility Coordination	2	8									
4.02	Corrosion Protection Design Services	2	16									
4.03	Seismic Design Criteria	4	16									
4.04	Drawings	16	40	24								
4.05	Specifications	16	40	16								
4.06	Traffic Control Plans	4	12	8								
4.07	Surveying	2	8	4								
4.08	Cost Estimate	4	8									
	Subtotal, Task 4 (hours)	50	148	92	8	24	32	2,720	2,616	2,720	600	1,850
	Subtotal, Task 4 (\$)	\$ 10,800	\$ 25,012	\$ 17,396	\$ -	\$ 2,272	\$ 2,616	\$ -	\$ -	\$ -	\$ -	\$ -
Task 5: Aesthetics												
5.01	Aesthetics	8	20									
5.02	Prebid Meeting, Inquiries, and Evaluation	4	16									
	Subtotal, Task 5 (hours)	12	36	0	0	0	0	0	0	0	0	0
	Subtotal, Task 5 (\$)	\$ 2,592	\$ 6,084	\$ -	\$ -	\$ 3,020	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL (hours)												
TOTAL (\$)												



WEST YOST ASSOCIATES, INC.

2009 Billing Rate Schedule

(Effective January 10, 2009 through December 31, 2009)*

Position	Labor Charges (dollars per hr)
Principal/Vice President	216
Engineering Manager	206
Principal Engineer/Scientist	188
Senior Engineer/Scientist/GIS Analyst	169
Associate Engineer/Scientist	151
GIS Analyst	151
Engineer II/Scientist II	134
Engineer I/Scientist I	115
Construction Manager III	164
Construction Manager II	151
Construction Manager I	139
Resident Inspector III	127
Resident Inspector II	117
Resident Inspector I	103
Sr. Designer/Sr. CAD Operator	109
Designer/CAD Operator	97
Technical Specialist II	94
Technical Specialist I	82
Engineering Aide	68
Administrative IV	97
Administrative III	85
Administrative II	73
Administrative I	61

* The following fees are include in the total compensation schedule any fee beyond the compensation schedule will require prior approval from the City.

Hourly labor rates include Direct Costs such as general computers, system charges, telephone, fax, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.

Outside Services such as vendor reproductions, prints, shipping, and major WYA reproduction efforts, as well as Engineering Supplies, Travel, etc. will be billed at actual cost plus 15%.

Mileage will be billed at the current Federal Rate.

Subconsultants will be billed at actual cost plus 10%.

Computers are billed at \$25 per hour for specialty models and AutoCAD.

A Finance Charge of 1.5 percent per month (an Annual Rate of 18 percent) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

Billing rates apply to all computers and equipment, whether owned or rented by WYA, and to all employment categories including regular full-time, part-time, limited term and contract personnel as defined in WYA's Employee Handbook.

***This schedule will be updated annually**



WEST YOST ASSOCIATES, INC.
2009 Billing Rate Schedule
(Cont'd.)

(Effective January 10, 2009 through December 31, 2009)*

SURVEYING AND EQUIPMENT CHARGES

Position	Labor Charges (dollars per hr)
GPS, 3-Person	333
GPS, 2-Person	284
GPS, 1-Person	223
Survey Crew, 2-Person	242
Survey Crew, 1-Person	182

EQUIPMENT CHARGES

Equipment	Billing Rate (dollars per day)	Billing Rate (dollars per week)
DO Meter	16	77
pH Meter	5	24
Automatic Sampler	120	658
Transducer/Data Logger	38	190
Hydrant Pressure Gage	11	47
Hydrant Pressure Recorder (HPR)	—	190
Hydrant Wrench	5	30
Pitot Diffuser	27	124
Well Sounder	27	124
Ultrasonic Flow Meter	—	249
Vehicle	82	412
Velocity Meter	11	60
Water Quality Multimeter	163	891
Thickness Gage	—	66

*This schedule will be updated annually

KEY PROJECT TEAM MEMBERS

<u>Name, Title</u>	<u>Responsibility</u>
John Goodwin, Vice President	Project Manager
Nancy McWilliams, Senior Engineer	Project Engineer
Patrick Fuss, Principal Engineer	Quality Control Review

**EXHIBIT C
INSURANCE COVERAGE DOCUMENTS**

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YY) 01/12/09
PRODUCER LIC #0E67768 1-925-416-7862 IOA Insurance Services 3875 Hopyard Rd., Suite 240 Pleasanton, CA 94588 Leslie Pancoast, CIC, RPLU	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED West Yost & Associates, Inc. 2020 Research Park Drive Suite 100 Davis, CA 95618	INSURERS AFFORDING COVERAGE	
	INSURER A: Travelers Property Casualty Co. of America	
	INSURER B: Travelers Indemnity Company of CT	
	INSURER C: Travelers Casualty & Surety Company	
	INSURER D: Zurich American Insurance Company	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	6802274L226	06/07/08	06/07/09	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$ 500,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
					PERSONAL & ADV INJURY \$ 1,000,000
					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/OP AGG \$ 2,000,000
					GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC
B	AUTOMOBILE LIABILITY	BA2258L183	06/07/08	06/07/09	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A	EXCESS LIABILITY	CUP6538Y917	06/07/08	06/07/09	EACH OCCURRENCE \$ 5,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 5,000,000
	<input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	UB7109Y912	09/01/08	09/01/09	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER \$ 1,000,000
					E.L. EACH ACCIDENT \$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	OTHER Professional Liability	EOC534712803	06/07/08	06/07/09	Per Claim \$ 2,000,000 Annual Aggregate \$ 2,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

All operations of the Named Insured, including project referenced below, if any.
 Professional Liability Retroactive Date: Full prior acts.
 General Liability: See Additional Insd endt attached. Auto Liability: See Designated Insd endt attached.
 Workers' Comp: See Waiver of Subrogation attached.
 General Liability and Auto Liability Additional Insured: City of Milpitas and its Officers, Employees, Agents, Contractors, Consultants and Volunteers.
 PROJECT NAME / NUMBER: S. MILPITAS BLVD WATER MAIN REPLACEMENT / CIP 7098

CERTIFICATE HOLDER	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION * 10 DAYS NOTICE FOR NON-PAYMENT OF PREMIUM
City of Milpitas and its Officers, Employees, Agents, Contractors, Consultants and Volunteers 455 East Calaveras Boulevard Milpitas, CA 95035 USA		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL TELEPHONE OR MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT IN NO EVENT SHALL THE INSURER BE OBLIGATED TO MAINTAIN OR REINSTATE COVERAGE. AUTHORIZED REPRESENTATIVE <i>Denise C. Toly</i>

ACORD 25-S (7/97) DVolz
10878516

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED


This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By:
Named Insured: West Yost & Associates, Inc.	 (Authorized Representative)

SCHEDULE

Name of Person(s) or Organization(s): City of Milpitas and its Officers, Employees, Agents, Contractors, Consultants and Volunteers 455 East Calaveras Boulevard Milpitas, CA 95035 USA

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

POLICY NUMBER: 6802274L226

NAMED INSURED:

West Yost & Associates, Inc.

COMMERCIAL GENERAL LIABILITY

DATE ISSUED: 01/12/09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

1. **WHO IS AN INSURED (Section II)** is amended to include any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but:
 - a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
 - b. If the injury or damage arises out of the performance, by you or your subcontractor, of "your work" to which the "contract or agreement requiring insurance" applies. Such person or organization does not qualify as an additional insured with respect to their independent acts or for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
 - a. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- b. This insurance does not apply to the rendering of or failure to render any "professional services".
- c. The limits of insurance afforded to the additional insured shall be the limits which you agreed to provide in that "contract or agreement requiring insurance", or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF INSURANCE (Section III)** for this Coverage Part.
3. The following is added to Paragraph a. of **4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV)**:

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

4. The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

5. As respects the insurance provided to the additional insured by this endorsement, the following definition is added to **DEFINITIONS (Section V):**

"contract or agreement requiring insurance" means that part of any

contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

All other terms of your policy remain the same.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective 12:01 AM 09/01/08 forms a part of Policy No. UB7109Y912

Issued to: West Yost & Associates, Inc.

By: Travelers Casualty & Surety Company

Premium: INCL

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us).

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 5% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

City of Milpitas and its Officers,
Employees, Agents, Contractors, Consultants and Volunteers

455 East Calaveras Boulevard

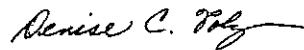
Milpitas, CA 95035

Job Description

PROJECT NAME / NUMBER: S. MILPITAS BLVD WATER MAIN REPLACEMENT / CIP 7098

WC 04 03 06
(Ed. 4-84)

Countersigned by



Authorized Representative

