



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, SEPTEMBER 21, 2021

**CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA
7:00 PM (PUBLIC BUSINESS)**

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3232

The City Council meeting is held in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas and via teleconference/Zoom webinar.

You may watch the Council meeting without providing public comment by accessing it via links here.

Meeting shall be livestreamed - Go to:

Facebook: <https://www.facebook.com/CityofMilpitas/>

YouTube: <https://www.ci.milpitas.ca.gov/youtube>

Web Streaming: <https://www.ci.milpitas.ca.gov/webstreaming>

PUBLIC COMMENT INSTRUCTIONS

Oral public comments may be provided live during the City Council meeting by first registering for the zoom meeting in advance by providing email address (not disclosed) and a name. To minimize technical difficulties, please make sure that you have the latest version of Zoom Meetings. Here is the link to register for this meeting only:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_pgR69dXcR0WU0BfTSX48YQ

After you register a link will be sent to you to join the City Council meeting in order to give your comments. All registered meeting attendees who wish to speak must click on the "raise hand" icon when the Mayor calls for public comments. If participating by calling in on your phone, dial *9 to use the "raise hand" feature, and when you are called upon, hit *6 to unmute your phone. Your phone number will be displayed in the live meeting. The Mayor will call the speakers to begin.

All comments provided shall be limited to three minutes or less as determined by the Mayor. All members of the public will be limited to one comment per agenda item, and one comment for non-agenda items.

MILPITAS CITY COUNCIL CODE OF CONDUCT

- Be respectful and courteous (words, tone, and body language).
- Model civility.
- Avoid surprises.
- Praise publicly and criticize privately.
- Focus on the issue, not the person.
- Refrain from using electronic devices while on the Council dais.
- Disclose conflicts of interest and affiliations related to agenda items.
- Separate governing from campaigning.
- The Council speaks with one voice after making policy on issues.
- Respect the line between policy and administration.
- Council will hold one another accountable to comply with this Code of Conduct.

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk (7:00 PM)

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Phan) (7:05 PM)

PRESENTATIONS (7:10 PM)

- Ovarian Cancer Awareness Month

PUBLIC FORUM (7:15 PM)

Those in the audience and via Zoom are invited to address City Council on any subject not on tonight's agenda. In-person speakers wishing to address the Council are requested, but not required to complete a Speaker Card and submit it to the Mayor. In-person speakers will then be asked to come up to the podium and state their name for the record. Those interested in speaking via Zoom may do so by following the instructions on page one (1) of the agenda. Comments may be limited to three (3) minutes or less at the Mayor's discretion. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. The City Council may instruct the City Manager to place the item on a future meeting agenda.

NOTE: If a member of the public wishes to share any presentation materials for Council consideration, they must be submitted to the Clerk's Office by email to CityClerk@ci.milpitas.ca.gov by 12:00 p.m. on the day of the meeting. No presentations will be accepted in person in the Council Chambers.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (7:20 PM)

Members of the City Council or City Manager may make brief announcements at this time. Members of the City Council may also suggest future agenda items at this time. For future agenda items, the City Council shall not debate the topic or engage in discussion but shall simply state a "yes" or "no" as to whether to direct the City Manager to place the item on a future meeting agenda. If a majority of the City Council agrees to place an item on a future meeting agenda, the City Manager shall place the item on a future agenda for City Council discussion.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR (7:30 PM)

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a City Councilmember, member of the audience or staff requests the Council to remove an item from (or be added to) the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar

C1. Receive the City Council Calendars of Meetings for September and October 2021 (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)

Recommendation: Receive the City Council Calendars of Meetings for September and October 2021.

C2. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)

Recommendation: Receive the list of anticipated agenda items for the next regular City Council meeting.

C3. Approve the City Council Meeting Minutes of the September 7, 2021, Regular Meeting (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)

Recommendation: Approve the meeting minutes of the September 7, 2021, Regular Meeting.

C4. Adopt a Resolution to Approve and Authorize the City Manager to Procure Vectra Cybersecurity Threat Detection Hardware and Service and Making Findings that the Procurement is in the Best Interests of the City (Staff Contact: Daniel Nam, Interim Information Technology Director, 408-586-2712)

Recommendation: Adopt a resolution to approve and authorize the City Manager to procure Vectra Cybersecurity Threat Detection Hardware and Service and make findings that the procurement is in the best interests of the City.

C5. Waive the Second Reading and Adopt Ordinance No. 23.16 Amending Title I, Chapter 2, Section 2.03 of the Milpitas Municipal Code Relating to Purchases Made by Departments (Staff Contact: Lauren Lai, Director of Finance, 408-586-3111)

Recommendation: Move to waive the second reading and adopt Ordinance No. 23.16 Amending Title I, Chapter 2, Section 2.03 of the Milpitas Municipal Code Relating to Purchases Made by Departments.

C6. Approve and Authorize the City Manager to Execute the Improvement Agreement with Stratford Schools, Inc. for the Completion of Offsite Public Improvements Located at 25 Corning Avenue (Staff Contact: Steve Erickson, Engineering Director/City Engineer, 408-586-3301)

Recommendation: Approve and authorize the City Manager to execute the Improvement Agreement between the City of Milpitas and Stratford Schools, Inc.

C7. Approve and Authorize the City Manager to Execute Amendment No. 2 with CivicPlus LLC for SeeClickFix Subscription, Training, and Apple/Android Apps for a total Amount Not-to-Exceed \$109,969.18 (Staff Contact: Tony Ndah, Public Works Director, 408-586-2602)

Recommendation: Approve and authorize the City Manager to Execute Amendment No. 2 with CivicPlus LLC for SeeClickFix subscription, training, and Apple/Android Apps for a total amount not-to-exceed \$109,969.18.

C8. Approve and Authorize the City Manager to Execute the Five-Year Professional Services Agreement with Echologics LLC for Pipeline Condition Assessment for the Not-to-Exceed Amount of \$260,000.00, Subject to the Annual Appropriation of Funds (Staff Contact: Tony Ndah, Public Works Director, 408-586-2602)

Recommendation: Approve and authorize the City Manager to execute the five-year Professional Services Agreement with Echologics LLC for Pipeline Condition Assessment for the not-to-exceed amount of \$260,000.00, subject to the annual appropriation of funds.

C9. Approve and Authorize the City Manager to Execute Amendment No. 1 to the Professional Services Agreement with WeHOPE for 52 Additional Mobile Shower and Laundry Sessions of Services for a Total Amount Not to Exceed \$71,552 (Staff Contact: Sharon Goei, Director of Building Safety and Housing, 408-586-3260)

Recommendation: Approve and authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with WeHOPE for 52 additional mobile shower and laundry sessions of services for a total amount not to exceed \$71,552.

C10. Receive the Monthly Report for Unhoused Services (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260)

Recommendation: Receive the June 2021 report for unhoused services.

- C11. Authorize the City Manager to Execute the Master Funding Agreement with the Metropolitan Transportation Commission for the Priority Development Area Planning Grant Program and the Professional Services Agreement with Ascent Environmental for Consultant Services Related to Preparation of the Milpitas Gateway/Main Street Specific Plan Update in the Amount of \$930,708.00 (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**

Recommendation: Authorize the City Manager to execute the master funding agreement with the Metropolitan Transportation Commission for the Priority Development Area Planning Grant Program and the professional services agreement with Ascent Environmental for consultant services related to preparation of the Main Street/Gateway Specific Plan Update in the amount of \$930,708.00.

- C12. Approve First Amendment to City Manager Employment Agreement with Steven McHarris (Staff Contact: Christopher J. Diaz, City Attorney, 408-586-3040)**

Recommendation: Approve First Amendment to City Manager Employment Agreement with Steven McHarris.

- C13. Accept Committee Member and Commissioner Resignations (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)**

Recommendation: Accept the resignations of Committee Member Nicholas Dold from the Measure F Oversight Committee and Arthur Ebright from the Veteran's Commission; and confirm the posting of the unscheduled vacancies.

PUBLIC HEARINGS (7:35 PM)

- 14. Conduct a Public Hearing and Approve the Draft FY 2020-2021 Community Development Block Grant (CDBG)'s Consolidated Annual Performance and Evaluation Report (CAPER) (Staff Contact: Sharon Goei, Director of Building Safety and Housing, 408-586-3260)**

Recommendation: (1) Open the public hearing, hear testimony, then move to close the public hearing; (2) Approve the draft FY 2020-2021 Community Development Block Grant (CDBG)'s Consolidated Annual Performance and Evaluation Report (CAPER); and (3) Authorize the City Manager, or designee, to make any necessary changes and to submit the approved draft FY 2020-2021 CAPER to the U.S. Department of Housing and Urban Development (HUD) to comply with CDBG requirements.

COMMUNITY DEVELOPMENT (8:10 PM)

- 15. Receive a Report and Provide Direction to Staff Regarding Goals and Policies in the Milpitas General Plan that Call for Preparation of a Specific Plan in the California Circle Area to Address Issues Related to Land Use Compatibility, Traffic Circulation, Public Safety, Open Space, etc. in Relation to Conceptual Plans for Proposed Development of up to 206 Multi-family Residential Units on a 6.69-acre Site Located at 1355 California Circle (APN: 22-338-007) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**

Recommendation: (1) Receive presentations from staff and the applicant; (2) Receive public comment; and (3) Restate and Affirm the City Council's Prior Direction to Staff to prepare a Specific Plan for the California Circle area to address issues related to land use compatibility, traffic circulation, public safety, open space, etc., as outlined in the Milpitas General Plan, and direct staff to provide comments on the Preliminary Review Application consistent with the General Plan Land Use Goal LU-2, Land Use Policy LU2-1, and Land Use Action LU-2b.

LEADERSHIP AND SUPPORT SERVICES (8:45 PM)

- 16.** FY 2020-21 Fourth Quarter Financial Status Report, Fund Balances Thereof and Related Budget Amendments to Close-out the FY 2020-21 Budget (Staff Contact: Lauren Lai, Director of Finance, 408-586-3111)

Recommendation: (1) Review the FY 2020-21 Quarterly Financial Status Report for the Quarter Ending June 30, 2021; (2) Provide direction on fund balance allocation, and (3) Approve budget amendment recommendations.

- 17.** Receive a report on the proposed project proposal for moderate income housing at Turing Apartments through a California Statewide Communities Development Authority program and provide direction to staff on next steps, if any (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Sharon Goei, Building Safety and Housing Director, 408-586-3260)

Recommendations: (1) Receive a report on the proposed project proposal for moderate income housing at Turing Apartments through a California Statewide Communities Development Authority program; and (2) If Council wishes to pursue the proposed project, (a) provide input to staff on the preliminary recommendations; (b) direct staff to bring back a framework and goals for this type of a moderate income housing program for Council consideration based on staff recommendations and Council input, and (c) direct staff to bring back for Council consideration along with a revised project proposal consistent with the framework and goals for a moderate income housing program.

REPORTS OF MAYOR & COUNCILMEMBERS (10:20 PM) - from assigned Commissions, Committees and Agencies

- 18.** Receive and Review the List of Agenda Items Requested by City Councilmembers (Contact: Mayor and City Councilmembers, 408-586-3000)

Recommendation: Review the list of items that have been requested by City Councilmembers and provide direction to staff as necessary. No substantive discussion about any specific item shall occur and the City Council shall hold all debate about the item until it is scheduled as a full agenda item.

ADJOURNMENT (10:30 PM)

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other City agencies exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on City website. City Council agendas and related materials can be viewed online: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall.
Contact the City Clerk's Office at 408-586-3001 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to CityClerk@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda.

August 2021						
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October 2021						
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31						

Milpitas City Council Calendar

September 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 2:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) 5:00 PM -Special Energy and Environmental Sustainability Commission (EC) 7:00 PM -Community Advisory Commission (EC)	2 9:00 AM -Special Housing Subcommittee (EC/AP) 4:30 PM -Milpitas Chamber of Commerce Board (EC) 5:30 PM -Santa Clara VTA Board of Directors (CM)	3 11:00 AM -Veterans Luncheon Subcommittee 12:00 PM -Veterans Day Ceremony Subcommittee	
5	6 CITY OBSERVED HOLIDAY City Hall Closed 	7 5:30 PM -Closed Session 7:00 PM -City Council	8 6:00 PM -Silicon Valley Clean Energy Board of Directors (EC) 7:00 PM -Planning Commission	9 10:30 AM -Special Housing Subcommittee (EC/AP) 4:00 PM -Santa Clara VTA Policy Advisory Committee (AP) 4:00 PM -Treatment Plant Advisory Committee (CM) 5:00 PM -Homelessness Task Force 7:00 PM -Cities Assoc of SCC (CM) 7:00 PM -Youth Advisory Commission (EC)	10 9:00 AM -Ad Hoc Main Street Revitalization Subcommittee (CM/EC) *4:30 PM -City Council Finance Subcommittee (RT/CM)	11
12	13 4:30 PM -Economic Development and Trade Commission (KD) 7:00 PM -Parks, Recreation & Cultural Resources Commission (CM)	14 4:00 PM -Milpitas HOPE Suicide Prevention Task Force	15 4:00 PM -Special Youth Advisory Commission (EC) 6:00 PM -Energy and Environmental Sustainability Commission (EC)	16 10:00 AM -VTA CMPP (CM) 5:30 PM -Measure F Oversight Committee 6:30 PM -Bay Area Water Supply Conserv Agency (CM) 7:00 PM -Public Safety and Emergency Preparedness Commission (KD)	17 9:00 AM -VTA Workshop (CM) 2:00 PM -Special Veterans Commission Meeting (RT) 5:00 PM -Hispanic Heritage Flag Raising Ceremony (Cesar Chavez Plaza)	18
19	20 5:30 PM -Library and Education Commission (EC) 7:00 PM -Science, Technology, and Innovation Commission (RT)	21 7:00 PM -City Council	22	23 4:00 PM -Silicon Valley Regional Interoperability Authority (SVRIA) (KD)	24 4:00 PM -City/School Collaborative Subcommittee (RT/CM)	25
26	27 7:00 PM -Arts Commission (RT)	28 5:30 PM -City Council Special Meeting	29	30 3:00 PM -Milpitas Metro Plan Notice of Preparation and EIR Scoping Meeting		

**Finance Subcommittee will meet only as needed*

September 2021						
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November 2021						
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Milpitas City Council Calendar

October 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 7:00 PM-Parks, Recreation & Cultural Resources Commission (CM)	5 7:00 PM-Closed Session 7:00 PM-City Council	6 2:00 PM-Santa Clara VTA Monthly Briefing - Northeast Group (CM) 5:30 PM-Veterans Commission (RT) 7:00 PM-Community Advisory Commission (EC)	7 10:30 AM-Virtual Manufacturing Day 4:30 PM-Milpitas Chamber of Commerce Board (EC) 5:30 PM-Santa Clara VTA Board of Directors (CM)	8 3:00 PM-Transportation Subcommittee (RT/CM)	9
10	11 4:30 PM-Economic Development and Trade Commission (KD)	12 4:00 PM-Milpitas HOPE Suicide Prevention Task Force	13 7:00 PM-Silicon Valley Clean Energy Board of Directors (EC) (Cupertino) 7:00 PM-Planning Commission	14 4:00 PM-Treatment Plant Advisory Committee (CM) (San Jose) 4:00 PM-Santa Clara VTA Policy Advisory Committee (AP) 5:00 PM-Homelessness Task Force 7:00 PM-Youth Advisory Commission (EC) 7:00 PM-Cities Assoc of SCC (CM)	15 4:30 PM-City Council Finance Subcommittee (RT/CM)	16
17	18 7:00 PM-Science, Technology, and Innovation Commission (RT)	19 7:00 PM-Closed Session 7:00 PM-City Council	20 6:00 PM-Energy and Environmental Sustainability Commission (EC)	21 11:00 AM-South Bay Odor Stakeholders Group Meeting (RT) 5:30 PM-Measure F Oversight Committee	22 4:00 PM-City/School Collaborative Subcommittee (MUSD hosting) (RT/CM)	23
24	25 6:00 PM-Milpitas Metro Outreach Meeting	26 1:30 PM-Senior Advisory Commission (EC) 5:30 PM-Special City Council -Milpitas Metro Draft Plan	27 5:30 PM-Cities Assoc. of SCC - Recycling and Waste Reduction Commission (AP) 7:00 PM-Planning Commission	28	29	30
31 HAPPY HALLOWEEN 						

**Finance Subcommittee will meet only as needed*

MILPITAS CITY COUNCIL AGENDA PREVIEW LIST

October 5, 2021

OCTOBER 5, 2021 – 1ST Tuesday

CLOSED SESSION

INVOCATION (assigned to Councilmember Dominguez)

PRESENTATION

- Fire Prevention Week (Proclamation)

CONSENT CALENDAR

1. Receive City Council calendar for October 2021 (City Clerk)
2. Approve City Council Regular meeting minutes of September 21, 2021 and Special meeting minutes of September 28, 2021 (City Clerk)
3. Preview list of items for October 19, 2021 (City Clerk)
4. Joint Resolution of the City Council and Successor Agency of the Milpitas Redevelopment Agency Board to Approve the \$65,000 Interfund Loan and Authorize Various Financial Actions by the City Manager (Lauren Lai)
5. Approve the City's Mural Program (Renee Lorentzen)
6. Approve and Authorize the City Manager to Execute Amendment No. 1 with Environmental Services Inc. for Citywide HVAC Maintenance Services for a total Amount Not-to-Exceed \$454,197.35 (Tony Ndah)
7. Receive a Report on the Homekey project at 1000 Hillview Court (Ashwini Kantak, Jared Hernandez, and Sharon Goei)
8. Approve and Authorize the City Manager to Execute a Master Funding Agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Innovative Transit Service Models Program; Approve New Fiscal Year 2021-22 Capital Improvement Program Project No. 3493 Milpitas OnDemand; Approve a Budget Appropriation of \$1,355,916 in Measure B Innovative Transit Service Models Program Funding and Developer Contributions into Project No. 3493; and Adopt a Resolution to Approve and Authorize the City Manager to Execute a Professional Services Agreement with RideCo with a Not-to-Exceed Amount of \$1,355,916 for Consultant Services to Operate Milpitas OnDemand and Make Findings that the Procurement is in the Best Interest of the City (Ned Thomas)

PUBLIC HEARING

COMMUNITY DEVELOPMENT

9. Receive a Status Report on the Main Street Revitalization Effort (Ashwini Kantak)

COMMUNITY SERVICES

10. Receive a Presentation from Staff and Provide Direction on Policy Options for Regulating New Tobacco Retailers through Permitting and Location Limits (Ned Thomas and Renee Lorentzen)
11. Approve the Montague Pedestrian Overcrossing Public Art Selection (Renee Lorentzen)

PUBLIC SAFETY

LEADERSHIP

12. Discussion and Direction regarding Financial Support for Utility Payments (Lauren Lai)

REPORTS

13. Review list of Future Agenda Items Requested by City Councilmembers (Mayor & CC/City Clerk)

PREVIEW NEXT AGENDA



MILPITAS CITY COUNCIL MEETING MINUTES

REGULAR MEETING OF THE MILPITAS CITY COUNCIL

TUESDAY, SEPTEMBER 7, 2021

CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD,
MILPITAS, CA

5:30 PM (CLOSED SESSION)

7:00 PM (PUBLIC BUSINESS)

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk

Mayor Tran called the Regular City Council meeting to order at 5:30 PM. Roll Call was taken by City Clerk Wood.

PRESENT: Mayor Tran, Vice Mayor Montano (arrived at approximately 5:35 PM), Councilmembers Chua, Dominguez, and Phan

ABSENT: None

ADJOURN TO CLOSED SESSION

(a) **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to California Government Code §54956.9(d)(1)

Alok Jain, et al. vs. City of Milpitas, et al; Santa Clara County Superior Court, Case No. 18CV325365

(b) **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1)

City as Plaintiff

County Sanitation District 2-3, West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, and City of Milpitas v. City of San Jose, City of Santa Clara

The City Council reconvened to the public portion of the meeting at 7:00 PM.

CLOSED SESSION ANNOUNCEMENT: Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present

City Attorney Diaz announced that there was no reportable action.

PLEDGE OF ALLEGIANCE

Mayor Tran led the Pledge of Allegiance.

INVOCATION

Councilmember Phan deferred the Invocation to Mayor Tran. Mayor Tran led the Invocation.

PRESENTATIONS

Mayor Tran proclaimed the month of September as Pain Awareness Month.

Vice Mayor Montano on behalf of the Mayor and City Council, proclaimed the week of September 5th as National Suicide Prevention Week and the month of September as National Preparedness Month.

Fire Chief Sherrard thanked Council for the proclamation and recognized Toni Charlop for her work on the emergency preparedness programs.

Councilmember Chua on behalf of the Mayor and City Council, proclaimed September 18, 2021, as National Cleanup Day and National Gymnastics Day. She acknowledged Scott Burns, owner of Game Time Elite Gymnastics.

Mayor Tran announced that the City will be holding a flag raising ceremony for the Hispanic Heritage Month on September 17 at 5:00 PM at Cesar Chavez Plaza.

PUBLIC FORUM

Those in the audience and via Zoom are invited to address City Council on any subject not on tonight's agenda. In-person speakers wishing to address the Council are requested, but not required to complete a Speaker Card and submit it to the Mayor. In-person speakers will then be asked to come up to the podium and state their name for the record. Those interested in speaking via Zoom may do so by following the instructions on page one (1) of the agenda. Comments may be limited to three (3) minutes or less at the Mayor's discretion. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. The City Council may instruct the City Manager to place the item on a future meeting agenda.

The following spoke under Public Forum:

1. Voltaire Montemayor

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Members of the City Council or City Manager may make brief announcements at this time. Members of the City Council may also suggest future agenda items at this time. For future agenda items, the City Council shall not debate the topic or engage in discussion but shall simply state a "yes" or "no" as to whether to direct the City Manager to place the item on a future meeting agenda. If a majority of the City Council agrees to place an item on a future meeting agenda, the City Manager shall place the item on a future agenda for City Council discussion.

City Manager McHarris announced that the City continues to partner with the County of Santa Clara for more testing in Milpitas. The City will be hosting a walkup COVID-19 pop-up clinic on Wednesday, September 15 from 4:30 PM to 7:30 PM at the Milpitas Community Center. The pop-up will have both Pfizer and Johnson and Johnson vaccines for the public 12 years or older.

Vice Mayor Montano spoke about murals on Main Street, stating that there are pillars there that would be a good art site. She would like the school district to have a contest with the students to create the artwork. She also requested that the City designate more street sweeping signage for different areas in the City, specifically at Capitol Avenue and Abel Street.

Councilmember Dominguez requested a future agenda item to create an agreement with the owners of electrical boxes to allow the City access to remove gang-related tagging within 24 hours. She also commented on the skate park, stating that she received some concern about the lighting and the pathway to the bathroom. She would like staff to follow up and let Council know if there is a plan to create a pathway from the skate park to the bathrooms and if there is no plan she would like this brought to Council to create a pathway.

Councilmember Chua spoke about the monthly neighborhood clean-up day between May through August. She requested that staff prepare a report and ask for direction from the Council on what to do next. She commented on the trash voucher program stating that out of the 130 vouchers available only 11 were used. She requested that the Public Information Officer do an outreach to make sure the community uses the vouchers by December 31. She also stated that Assemblymember Alex Lee would like to partner with the City

at the Farmer's Market on October 24 to promote having safety resources. Assemblymember Lee's office is for Milpitas Police Department and Fire Department to participate in the event. Mayor Tran noted that all requests for staff should be directed to the City Manager.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked the Mayor and City Councilmembers if they had any personal conflicts of interest. By roll call, there were no conflicts of interest. City Attorney Diaz asked the Mayor and City Councilmembers if they had any reportable campaign contributions. By roll call, there were no reportable campaign contributions.

READING OF THE CITY COUNCIL CODE OF CONDUCT

City Attorney Diaz read aloud the City Council Code of Conduct.

APPROVAL OF AGENDA

Mayor Tran stated that he would like to postpone item C8 to a later date to extend the term. There being no objections Mayor Tran stated that Item C8 would be postponed.

Motion: to approve the September 7, 2021, regular meeting agenda.

Motion/Second: Mayor Tran / Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a City Councilmember, member of the audience or staff requests the Council to remove an item from (or be added to) the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar.

Motion: to approve the Consent Calendar. (Item C8 is postponed)

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by a vote of: AYES: 5
NOES: 0

- C1. Receive the City Council Calendar of Meetings for September 2021 (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)**

Received the City Council Calendar of Meetings for September 2021.

- C2. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)**

Received the list of anticipated agenda items for the next regular City Council meeting.

- C3. Approve the City Council Meeting Minutes of the August 17, 2021, Regular Meeting (Staff Contact: Wendy Wood, City Clerk, 408-586-3001)**

Approved the meeting minutes of the August 17, 2021, regular meeting.

- C4. Adopt a Resolution Directing Staff to Fly City Event Celebration and/or Commemorative Flags at Various Standard Annual Events (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Adopted **Resolution 9102** directing staff to fly City Event Celebration and/or Commemorative Flags at various standard annual events and flag position for multiple commemorative periods.

- C5. Approve and Authorize the City Manager to Execute a Professional Services Agreement with Disability Access Consultants, LLC in the amount of \$269,150 for ADA Self-Evaluation and Transition Plan for the ADA Compliance Review, Project No. 3436; and Approve a Budget Appropriation of \$134,158 in PLAN JPA Grant Funding, and \$37,000 of General Government CIP Funding into Project No. 3436 (Staff Contact: Steve Erickson, Engineering Director/City Engineer, 408-586-3301)**

Approved and authorized the City Manager to execute a Professional Services Agreement with Disability Access Consultants, LLC in the amount of \$269,150 for ADA Self-Evaluation and Transition Plan for the ADA Compliance Review, Project No. 3436; and approved a Budget Appropriation of \$134,158 of PLAN JPA Grant Funding, and \$37,000 from the General Government CIP Fund into CIP Project No. 3436.

- C6. Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for Milpitas – District 2 Owner, LLC for the District 1 Lot 2 Project at 1415 McCandless Drive (Staff Contact: Steve Erickson, Engineering Director/City Engineer, 408-586-3301)**

Approved and authorized the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for Milpitas – District 2 Owner, LLC for the District 1 Lot 2 Project at 1415 McCandless Drive.

- C7. Review and Accept the Legislative Action Report (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)**

Reviewed and accepted the Legislative Action Report.

- C8. Approve First Amendment to City Manager Employment Agreement with Steven McHarris (Staff Contact: Christopher J. Diaz, City Attorney, 408-586-3040)**

This item was postponed to a future date.

- C9. Approve and Authorize the City Manager to Execute a Memorandum of Understanding with the Santa Clara County Specialized Enforcement Team for a Ten-Year Period in an Amount Not to Exceed \$100,000, Subject to the Annual Appropriation of Funds (Staff Contact: Jared Hernandez, Acting Chief of Police, 408-586-2406)**

Approved and authorized the City Manager to execute a Memorandum of Understanding with the Santa Clara County Specialized Enforcement Team for a ten-year period in an amount not to exceed \$100,000, subject to the annual appropriation of funds.

- C10. Approve and Authorize an Extension of an Employment List for the position of Fire Captain to July 13, 2022, unless otherwise exhausted or abolished in accordance with the Personnel Rules (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Jeannine Seher, Human Resources Director, 408-586-3086)**

Approved and authorized an extension of an Employment List for the position of Fire Captain to July 13, 2022, unless otherwise exhausted or abolished in accordance with the Personnel Rules.

C11. Receive a Report on the Milpitas HOPE Suicide Prevention Task Force Activities Since September 2020 (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Received a report on the Milpitas HOPE Suicide Prevention Task Force Activities.

C12. Approve and Authorize Payments During Fiscal 2021-22 for Worker's Compensation, General Liability, and Property Insurance Premiums and 10% Additional Payment Authority Designated to the City Manager (Staff Contact: Lauren Lai, Director of Finance, 408-586-3111)

Approved and authorized payments during Fiscal 2021-22 for Worker's Compensation, General Liability, and Property Insurance Premiums and 10% Additional Payment Authority Designated to the City Manager.

COMMUNITY DEVELOPMENT

13. Receive Report on Proposed Rent and Mortgage Relief Program Included in the Preliminary American Rescue Plan Act Investment Plan and Provide Direction to Staff (Staff Contact: Sharon Goei, Director of Building Safety and Housing, 408-586-3260)

Director of Building Safety and Housing Goei and Housing and Neighborhood Services Administrator Musallam gave a presentation on the program.

Council asked clarifying questions.

Sheri Burns from Silicon Valley Independent Living Center provided additional information.

Council provided feedback to staff to allocate 75 percent of the funding toward rent relief and 25 percent towards mortgage relief and to exclude investment properties from the relief program.

The following spoke during Public Comment:

1. Voltaire Montemayor
2. Allysson McDonald

Staff stated that they still need to go through the selection process and receive some additional information on the staffing resources and informed Council that this item will come back as part of the American Rescue Plan Act update.

14. Receive a Report on the Pilot Mobile Shower and Laundry Program and Provide Direction to Staff (Staff Contact: Sharon Goei, Director of Building Safety and Housing, 408-586-3260)

Director of Building Safety and Housing Goei gave a presentation on the pilot program.

The following spoke during Public Comment:

1. Unhoused Milpitas resident
2. Milpitas resident
3. Voltaire Montemayor
4. Allysson McDonald
5. Yolie Garcia

Council stated support for the program and discussed alternate locations.

Council provided direction to staff to continue the program for an additional 12 months and to look into other location options for the dates surrounding the Magic on Main Street event.

LEADERSHIP AND SUPPORT SERVICES

15. Introduce Ordinance No. 23.16 Amending Title I, Chapter 2, Section 2.03 of the Milpitas Municipal Code Relating to Purchases Made by Departments (Staff Contact: Lauren Lai, Director of Finance, 408-586-3111)

Finance Director Lai gave a presentation on the proposed ordinance.

The following spoke during Public Comment:

1. Voltaire Montemayor

City Attorney Diaz read the title of Ordinance 23.16 “An Ordinance of The City Council f The City of Milpitas Amending Title 1, Chapter 2, Section 2.03 Of The Milpitas Municipal Code Relating To Purchases Made By Departments.”

Motion: to waive the first reading beyond the title of Ordinance No. 23.16; and introduce Ordinance No. 23.16 Amending Title I, Chapter 2, Section 2 of the Milpitas Municipal Code Relating to Purchases Made by Departments.

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by a vote of: AYES: 4

NOES: 1 (Montano)

16. Receive a Report from Staff Regarding Transition to an In-House City Attorney, Establish the Position of City Attorney, Adopt a Resolution to Amend the Classification Plan to Add the Salary Range for the City Attorney, and Provide Input into the Desired Qualifications to Assist in the Selection Process for the City Attorney (Staff Contacts: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Jeannine Seher, Human Resources Director, 408-586-3086)

Assistant City Manager Kantak and Human Resources Director Seher gave a presentation on the transition and asked for Council input on the desired qualifications.

The following spoke during Public Comment:

1. Voltaire Montemayor

Council asked clarifying questions and provided general feedback on desired qualifications.

Pamela Derby, a consultant from CPS HR Consulting, provided additional information.

After further discussion, Motion: to establish the position of City Attorney and adopt **Resolution No. 9103** to amend the Classification Plan to add the Salary Range for the City Attorney.

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by a vote of: AYES: 3

REPORTS OF MAYOR & COUNCILMEMBERS - from assigned Commissions, Committees, and Agencies

17. Establish the Main Street Revitalization Ad-Hoc Council Sub-Committee Comprised of Vice Mayor Montano and Councilmember Chua (Contact: Mayor Tran, 408- 586-3029)

Mayor Tran spoke about the Main Street Revitalization and recommended the appointment of Vice Mayor Montano and Councilmember Chua to the Main Street Revitalization Ad-Hoc Council Sub-Committee.

The following spoke during Public Comment:

1. Voltaire Montemayor

Motion: to establish the Main Street Revitalization Ad-Hoc Council Sub-Committee Comprised of Vice Mayor Montano and Councilmember Chua.

Motion/Second: Mayor Tran / Vice Mayor Montano

Motion carried by a vote of: AYES: 5

NOES: 0

18. Receive and Review the List of Agenda Items Requested by City Councilmembers (Contact: Mayor and City Councilmembers, 408-586-3000)

Mayor Tran asked if there were any members of the City Council wishing to comment on this item.

Vice Mayor Montano commented on establishing a museum on Main Street.

There was no action taken on this item.

ADJOURNMENT

Mayor Tran adjourned the meeting at 11:00 PM.

Draft meeting minutes submitted by City Clerk, Wendy Wood



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution to Approve and Authorize the City Manager to Procure Vectra Cybersecurity Threat Detection Hardware and Service and Making Findings that the Procurement is in the Best Interests of the City
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/21/2021
Staff Contact:	Daniel Nam, Interim Information Technology Director, 408-586-2712
Recommendation:	Adopt a resolution to approve and authorize the City Manager to procure Vectra Cybersecurity Threat Detection Hardware and Service and make findings that the procurement is in the best interests of the City.

Background:

In response to rising cyber threats and incidents crippling many organizations worldwide, and to improve the City's cybersecurity posture, the City entered into a 1-year contract with Darktrace Enterprise Immune System in August 2020. Staff recognizes that government agencies are experiencing highly targeted and evolving cyberattacks and thus continuously monitor and conduct market research to find ways to further reduce the risk to the City's IT infrastructure.

As cyberthreats evolve, new technologies and more solutions to combat these threats become available. Recent research by staff included other market leading products that are currently used by federal, state and neighboring local agencies, such as DEA, US Senate, Franchise Tax Board and BART.

Analysis:

Staff focused on finding a solutions partner with proven technology, ease of use, satisfactory customer support, and potential cost savings to the City. Due to a short timeline and challenges with renewing the existing product, staff is requesting the City Council adopt a resolution authorizing the City Manager to procure new cybersecurity threat detection hardware and service from Vectra in accordance with Milpitas Municipal Code section I-2-3.03(d) because it is in the best interests of the City to do so based on the following. Vectra is a local company based in Santa Clara County and satisfies the City's preference for partnering with local vendors. Vectra provides immediate access to a local support team that can provide on-site support when necessary. Vectra provides technical advantages in detection and monitoring, which can be implemented immediately. The Vectra solution offers an unlimited storage option and uses direct host and account lockdown mechanisms for enforcement and response that are more reliable than other comparable products. The Vectra management interface is cleaner and easier to understand as the product separates attack signal from noise and uses aggregated host scoring for prioritization. Vectra's system makes potential solutions and suggestions per detected threat readily available, which allows analysts to take immediate action in response to the threat - this can directly translate into efficiency because less training is required to use the product to its full capacity. Renewal of the City's existing threat detection system would cost \$76,000. The cost of the Vectra system would be approximately \$55,000, resulting in annual cost savings of \$21,000. In addition, by partnering with a new provider, the City will benefit from a fresh perspective and approach, and easily and quickly identify and take necessary actions on suspected and detected threats on both the City's internal network and cloud assets.

Policy Alternatives:

Alternative 1: Do not approve the procurement of Vectra Cybersecurity Threat Detection Hardware and Service.

Pros: None

Cons: City will lose the ability to actively monitor suspicious network activities and take necessary actions.

Reason not recommended: City's IT infrastructure will be more vulnerable to cyberthreats and attempts to gain unauthorized access to the City's systems and data are more likely to go undetected.

Fiscal Impact:

The existing threat detection system renewal is \$76,000 for one year of service. The Vectra system costs approximately \$55,000 per year, resulting in annual cost savings of \$21,000. There are sufficient funds available in CP3427, Technology Project, to cover the cost of \$55,000. Funding source for Technology Projects comes from General Government CIP Fund and Permit Automation Fund. As of September 16, 2021, the balance in CP3427 is \$470,501.

California Environmental Quality Act:

The City Council's adoption of the resolution is an activity that is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline 15061(b)(3) as it can be seen with certainty that the activity will not have a significant effect on the environment, primarily because, the City would only be purchasing upgraded cybersecurity threat software without any change to any physical structure or the environment. Further, the City Council's action in adopting the resolution can also be seen as exempt under CEQA Guideline 15301 as the maintenance of existing facilities with no expansion of use.

Recommendation:

Adopt a resolution to approve and authorize the City Manager to procure Vectra Cybersecurity Threat Detection Hardware and service and make findings that the procurement is in the best interests of the City.

Attachment:

Resolution for Vectra Procurement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
APPROVE AND AUTHORIZE THE CITY MANAGER TO PROCURE
VECTRA CYBERSECURITY THREAT DETECTION HARDWARE AND
SERVICE AND MAKE FINDINGS THAT THE PROCUREMENT IS IN
THE BEST INTERESTS OF THE CITY**

WHEREAS, in response to rising cybersecurity threats and incidents crippling many organizations worldwide, and to improve the City's cybersecurity posture, the City entered into a 1-year contract with Darktrace Enterprise Immune System in August 2020; and

WHEREAS, the IT department recognizes that government agencies are experiencing highly targeted and evolving cyberattacks; and

WHEREAS, as cyberthreats evolve, new technologies and more solutions to combat these threats become available; and

WHEREAS, the City is focused on finding a solutions partner with proven technology, ease of use, satisfactory customer support, and potential cost savings to the City; and

WHEREAS, after substantial review of available products on the market, the City has selected Vectra Cybersecurity Threat Detection Hardware and Service; and

WHEREAS, Milpitas Municipal Code section I-2-3.03(d) authorizes the City to make procurements without a formal competitive process when authorized by the City Council to be in the best interests of the City; and

WHEREAS, it is in the City's best interests to contract with Vectra for the reasons noted herein.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council finds that entering into a contract for the Vectra Cybersecurity Threat Detection Hardware and Service is in the best interest of the City based on the following:
 - a) Vectra is a local company based in Santa Clara County and satisfies the City's preference for partnering with local vendors.
 - b) Vectra provides immediate access to a local support team that can provide on-site support when necessary.
 - c) Vectra provides technical advantages in detection and monitoring, which can be implemented immediately.
 - d) Vectra offers an unlimited storage option and uses direct host and account lockdown mechanisms for enforcement and response that are more reliable than other comparable products.
 - e) The Vectra management interface is cleaner and easier to understand as the product separates attack signal from noise and uses aggregated host scoring for prioritization.
 - f) Vectra's system potential solutions and suggestions per detected threat readily available, which allows analysts to take immediate actions in response to the threat - this can directly translate into efficiency because less training is required to use

the product to its full capacity.

- g) The cost of the Vectra system is approximately \$55,000, resulting in annual cost savings of \$21,000.
 - h) The City has already performed significant market research and analysis including evaluating cybersecurity products in use by federal, state and neighboring local agencies thereby rendering a formal competitive process moot.
3. The City Council hereby authorizes the City Manager to procure Vectra Cybersecurity Threat Detection Hardware and Service and to take all related actions necessary to carry out this procurement.

PASSED AND ADOPTED this _____ day of _____ 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Wendy Wood, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Resolution No. ____



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Waive the Second Reading and Adopt Ordinance No. 23.16 Amending Title I, Chapter 2, Section 2.03 of the Milpitas Municipal Code Relating to Purchases Made by Departments
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/21/2021
Staff Contact:	Lauren Lai, Director of Finance (408) 586-3111
<u>Recommendation:</u>	Move to waive the second reading and adopt Ordinance No. 23.16 Amending Title I, Chapter 2, Section 2.03 of the Milpitas Municipal Code Relating to Purchases Made by Departments

Background:

Ordinance No. 23,16 amending Title I, Chapter 2, Section 2.03 of the Milpitas Municipal Code relating to purchases made by departments was introduced at the September 7, 2021 City Council meeting. This Ordinance is now ready for its second reading and adoption.

Fiscal Impact:

There is no fiscal impact.

Environmental Review:

The adoption of this Ordinance is not a project subject to the California Environmental Quality Act (CEQA) as it can be seen with certainty that the ordinance does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and is more akin to an administrative activity of the government pursuant to CEQA Guidelines Section 15378.

Recommendations:

Move to waive the second reading and adopt Ordinance No. 23.16 amending Title I, Chapter 2, Section 2.03 of the Milpitas Municipal Code relating to purchases made by departments.

Attachment:

Ordinance No. 23.16

REGULAR

NUMBER: 23.16

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AMENDING TITLE 1, CHAPTER 2, SECTION 2.03 OF THE MILPITAS
MUNICIPAL CODE RELATING TO PURCHASES MADE BY DEPARTMENTS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of
September 7, 2021, upon motion by Mayor Tran and was adopted
(second reading) by the City Council at its meeting of _____, upon motion by
_____. The Ordinance was duly passed and ordered
published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Wendy Wood, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City's Purchasing Division in the Finance Department provides support to City Departments pertaining to the procurement of supplies or services; and

WHEREAS, subsection I-2-2.03 of the Municipal Code authorizes each City Department to purchase supplies, materials, equipment, and services not to exceed \$10,000. For supplies, materials, and equipment, the department must use a Procurement Card or submit a Purchase Requisition to Finance for issuance of a Purchase Order. For services with a value greater than \$1,000, the department must submit a Purchase Requisition to Finance for issuance of a contract and ensure compliance with insurance requirements as promulgated by the Risk Manager; and

WHEREAS, City staff has proposed an amendment to subsection I-2-2.03 to allow more flexibility in procurement and disbursements for the purchase of supplies, materials, and equipment made by departments; and

WHEREAS, the details of the form of procurement and disbursement specificity is removed from the City municipal code and will be provided in City administrative policy; and

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE 1 (Administration), CHAPTER 2 (Purchasing), SECTION 2 (Division of Purchasing), Subsection 1-2-2.03 (Purchases made by Departments)

Title 1 (Administration), Chapter 2 (Purchasing), Section 2 (Division of Purchasing), Subsection 1-2-2.03 (Purchases made by Departments) of the Milpitas Municipal Code is hereby amended to read as follows:

I-2-2.03 – Purchases made by Departments

Each Department has the authority to purchase supplies, materials, equipment and services not to exceed Ten Thousand Dollars (\$10,000).-

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute the Improvement Agreement with Stratford Schools, Inc. for the Completion of Offsite Public Improvements Located at 25 Corning Avenue.
Category:	Consent Calendar-Community Development
Meeting Date:	9/21/2021
Staff Contact:	Steve Erickson, Engineering Director/City Engineer, 408-586-3301
Recommendation:	Approve and authorize the City Manager to execute the Improvement Agreement between the City of Milpitas and Stratford Schools, Inc.

Background:

On November 18, 2020, the Milpitas Planning Commission conditionally approved Developer's application Conditional Use Permit Amendment (P-UP20-0002) and Minor Site Development Permit (P-MS20-0141) for the completion of both onsite building improvements and offsite public improvements of property located at 25 Corning Avenue that is to be used for a Stratford School ("Project").

Proposed offsite improvements within the City's right of way include the installation of asphalt concrete pavement, curb, gutter, sidewalk, driveway approach, utility services, installation of fire service double-check detector assembly, and other miscellaneous and minor items of work. The engineers estimate for these public improvements to be constructed by the Project is \$48,300.

Analysis:

The Developer has agreed to enter into an Improvement Agreement (Attachment) with the City for the construction of off-site public improvements for the project which are to be completed with the on-site work and accepted by the City after completion. The improvements will be completed within 1-year from the date of the Agreement, and the work is to be guaranteed by bonds or similar securities to be posted by the Developer in the amount of \$48,300.00.

The City Engineer has reviewed the public improvement plans (2-1357) and is recommending the City Council approve the Improvement Agreement to allow for the construction of public improvements to proceed.

Policy Alternatives:

Alternative 1:

Deny approval of Improvement Agreement for the installation of offsite improvements for the Stratford School develop.

Pros: None

Cons: Denying the approval of the Improvement Agreement will cause the proposed offsite public improvements that support the Stratford School to not be constructed.

Reason not recommended: The proposed offsite public improvements are designed to support the Stratford School and staff recommends the City Council approve the Improvement Agreement for construction.

Fiscal Impact:

Required public improvements will be constructed by the Developer and there will be no fiscal impact to the City.

California Environmental Quality Act:

Approval of the Improvement Agreement implements this project for which CEQA review has already been completed through the City Council's adoption of Resolution No. 7840 and the contemplated improvements are part of the project analyzed under CEQA. Further, there are no substantial or any other changes or new information regarding the project, or facts under which the project will be undertaken, that trigger the need for any subsequent, supplemental, or any other further environmental review.

Recommendation

Approve and authorize the City Manager to execute the Improvement Agreement between the City of Milpitas and Stratford Schools, Inc.

Attachments:

1. Improvement Agreement
2. Site Plan

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:

CITY OF MILPITAS
455 EAST CALAVERAS BOULEVARD
MILPITAS, CA 95035-5479
ATTN: ENGINEERING DEPARTMENT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt from recording fee, per Government Code
Section 6103

CITY OF MILPITAS, CALIFORNIA

By: _____
City Clerk

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS

25 CORNING AVENUE

**between
CITY OF MILPITAS**

a California municipal corporation

**and
STRATFORD SCHOOLS, INC.**

a California corporation

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS

III. PARTIES AND DATE.

This Agreement for the Completion of Public Improvements ("Agreement") is entered into as of this 2nd day of August, 2021 by and between the City of MILPITAS, a California municipal corporation ("City") and Stratford Schools, Inc., a corporation with its principal office located at California ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

IV. RECITALS.

A. On February 27, 2020, Developer submitted to City an application for approval of a Conditional Use Permit Amendment (P-UP20-0002) and Minor Site Development Permit (P-MS20-0141) for the Stratford School addition and remodel (the "Project") for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property").

B. On November 18, 2020, the MILPITAS PLANNING COMMISSION conditionally approved Developer's application for a Conditional Use Permit (P-UP20-0002) and Minor Site Development Permit (P-MS20-0141) for the Project.

C. Developer has not completed all of the work or made all of the public improvements required by Title X, Chapter 1, Section 8 of City's municipal code, the conditions of approval for the Project, or other ordinances, resolutions, or policies of City requiring construction of public improvements in conjunction with the subdivision of land.

D. Pursuant to Title X, Chapter 1, Section 8 of City's municipal code, Developer and City enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for the Project.

E. Developer's execution of this Agreement and the provision of the security are made in consideration of City's approval of the Project.

III. TERMS.

1.0 Effectiveness. This Agreement shall not be effective unless and until all three of the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement and (b) Developer executes and records this Agreement in the Recorder's Office of the County of SANTA CLARA. If the above described conditions are not satisfied within 60 days after the entry date of this Agreement, this Agreement shall automatically terminate without need of further action by either City or Developer.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of the Project, including, but not limited to, all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities as shown in detail on the plans, profiles, and specifications which have been prepared by or on behalf of Developer for the Project ("Public Improvements"). The Public Improvements are more specifically described in Exhibit "B," which is attached hereto and incorporated herein by this reference, and as shown on City approved Improvement Plan No. 2-1357 on file with the City. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. The Developer shall be responsible for the replacement, relocation, or removal of any component of any irrigation water system in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such water system. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

2.1 Prior Partial Construction of Public Improvements. Where construction of any Public Improvements has been partially completed prior to this Agreement, Developer agrees to complete such Public Improvements or assure their completion in accordance with this Agreement.

2.2 Permits; Notices; Utility Statements. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. Prior to commencing any work, Developer shall file a written statement with the City Clerk and the City Engineer, signed by Developer and each utility which will provide utility service to the Property, attesting that Developer has made all deposits legally required by each utility for the extension and provision of utility service to the Property.

2.3 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans and specifications for such Public Improvement have been submitted to and approved by the City Engineer, or his or her designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The Public Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. The Public Improvements in Exhibit "B", and as shown on City approved Improvement Plan No. 2-1357 on file with the City, are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of Public Improvements and Landscaping. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted by City pursuant to Section 11.0. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any

damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

4.0 Construction Schedule. Unless extended pursuant to this Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements within one (1) year of the effective date of this Agreement, unless extended pursuant to Section 4.1.

4.1 Extensions. City may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. It is understood that by providing the security required under Section 13.0 et seq. of this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waives any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defense of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates established by City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

4.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete required or agreed upon Public Improvements.

5.0 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements, including City's grading regulations. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in Sections 11.0 and 13.0 et seq. of this Agreement.

6.0 Utilities. Developer shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within the Project in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground.

7.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to, all plan check, design review, engineering, inspection, and other service fees, and any impact or connection fees established by City ordinance, resolution, regulation, or policy, or as established by City relative to the Project.

8.0 City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

9.0 Default; Notice; Remedies.

9.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs expenses as provided for in Section 10.0 of this Agreement.

9.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

9.3 Other Remedies. No action by City pursuant to Section 9.0 et seq. of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

10.0 Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

11.0 Acceptance of Improvements by City Council; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete and reduce the requirement Security amount pursuant to Section 13.0 et seq., which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial acceptance of the Public Improvements by City, Developer shall file with the Recorder's Office of the County of SANTA CLARA a notice of completion for the accepted Public Improvements in accordance with California Civil Code section 9204, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefor. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

12.0 Warranty and Guarantee. Developer hereby warrants and guarantees all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the Public Improvements and acceptance of them by the City Council ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and subject to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following the City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

13.0 Improvement Security; Surety Bonds. Prior to this Agreement taking effect as set forth in Section 1.0 above, Developer shall provide City with surety bonds in the amounts

and under the terms set forth below ("Security"). The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all landscaping ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this provision (Section 13.0 et seq.) shall in no way limit or modify Developer's indemnification obligation provided in Section 16.0 of this Agreement.

13.1 Performance Bond. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 9.0 et seq. of this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City a faithful performance bond in the amount of forty-eight thousand and three hundred Dollars (\$48,300), which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City Council may, in its sole and absolute discretion and upon recommendation of the City Engineer, partially release a portion or portions of the security provided under this section as portions of the Public Improvements are completed and accepted by the City Council, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Project, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 12.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Project.

13.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, material men, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City a labor and materials bond in the amount of forty-eight thousand and three hundred Dollars (\$48,300), which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section may be released by written authorization of the City Engineer after six (6) months from the date City accepts the final Public Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

13.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best's rating of no less than A:VIII, shall be licensed to do business in California, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, the Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by City in enforcing the obligations of this Agreement. The Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

13.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C," unless other forms are deemed acceptable by

the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

14.0 **RESERVED.**

15.0 **Lien.** To secure the timely performance of Developer's obligations under this Agreement, including those obligations for which security has been provided pursuant to Sections 13 et seq. and 14 of this Agreement, Developer hereby creates in favor of City a lien against all portions of the Property not dedicated to City or some other governmental agency for a public purpose. As to Developer's default on those obligations for which security has been provided pursuant to Sections 13 et seq. and 14 of this Agreement, City shall first attempt to collect against such security prior to exercising its rights as a contract lienholder under this section.

16.0 **Indemnification.** Developer shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of Agency as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

16.1 **Public Works Determination.** Developer has been alerted to the requirements of California Labor Code section 1770 et seq., including, without limitation S.B. 975, which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Agreement.

17.0 **Insurance.**

17.1 **Types; Amounts.** Developer shall procure and maintain, and shall require its contractors to procure and maintain, during construction of any Public Improvement pursuant to this Agreement, insurance of the types and in the amounts described below ("Required

Insurance”). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

17.1.1 General Liability. Developer and its contractors shall procure and maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage.

17.1.2 Business Automobile Liability. Developer and its contractors shall procure and maintain business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

17.1.3 Workers’ Compensation. Developer and its contractors shall procure and maintain workers’ compensation insurance with limits as required by the Labor Code of the State of California and employers’ liability insurance with limits of not less than \$1,000,000 per occurrence, at all times during which insured retains employees.

17.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Public Improvements, liability insurance for errors and omissions with limits not less than \$1,000,000 per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Public Improvements. Such insurance shall be endorsed to include contractual liability.

17.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

17.3 Additional Insured; Separation of Insureds. The Required Insurance shall name City, its elected officials, officers, employees, agents, and volunteers as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents, and volunteers.

17.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, agents, and volunteers. All policies for the Required Insurance shall provide that the insurance company waives all right of recovery by way of subrogation against City in connection with any damage or harm covered by such policy.

17.5 Certificates; Verification. Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required

Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

17.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on 30 days prior written notice to City.

17.7 Insurer Rating. Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A:VIII.

18.0 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer and its surety. Developer and its surety shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

19.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

20.0 General Provisions.

20.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

20.2 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

20.3 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of

reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

20.4 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

CITY OF MILPITAS
455 East Calaveras Boulevard
MILPITAS, CA 95035
Attn: Steven Erickson, PE
Director of Engineering/City Engineer

DEVELOPER: Stratford Schools, Inc
1999 South Bascom Avenue, Suite 400
CAMPBELL, CA 95008
Attn: Charles Barr
Executive Vice President of Real Estate

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

20.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

20.6 Waiver. City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution or performance of the Public Improvements or this Agreement.

20.7 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement.

20.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

20.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

20.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

20.11 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of SANTA CLARA, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

20.12 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs, which shall include, without limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (a) post judgment motions and appeals, (b) contempt proceedings, (c) garnishment, levy, and debtor and third party examination, (d) discovery, and (e) bankruptcy litigation. This section shall survive the termination or expiration of this Agreement.

20.13 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

City of Milpitas,
a California municipal corporation

Stratford Schools, Inc.
a California corporation

By: _____

Name: Steve McHarris

Title: City Manager

By: _____

Name: Charles Barr

Title: Executive Vice President of Real Estate

APPROVED AS TO FORM:

Christopher J. Diaz
City Attorney

APPROVED:

Lauren Lai, CPA, MPA
Finance Director/Risk Manager

APPROVED AS TO SUFFICIENCY:

Steven Erickson
Engineering Director / City Engineer

NOTE: DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

City of Milpitas,
a California municipal corporation

Stratford Schools, Inc.
a California corporation

By: _____

Name: Steve McHarris

Title: City Manager

By:  _____

Name: Charles Barr

Title: Executive Vice President of Real Estate

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NOTE: DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

All Capacity Acknowledgment

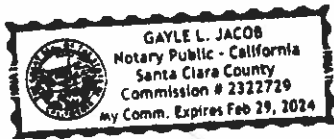
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Santa

On July 30, 2024, before me, Gayle L. Jacob, Notary Public, personally appeared Charles Burr, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
Corporate Officer
-
- Title(s)
Partner (s) ☐ Limited
☐ General
Attorney-In-Fact
Trustee(s)
Guardian/Conservator
Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Agreement For Completion of Public
Improvements - 25 Cornhill Avenue

Number of Pages

Date of Document

Signer(s) Other Than Named Above

All Capacity Acknowledgment

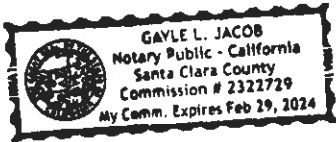
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF San Tan

On July 30, 2021, before me, Gayle L. Jacob, Notary Public, personally appeared Charles Barr, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

~~Signature of Notary Public~~

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer
-
- ☐ Partner (s)
 ☐ Limited
☐ General
- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Agreement For Completion of Public
Improvements - 25 Corning Avenue

Number of Pages

Date of Document

Signer(s) Other Than Named Above

EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY

STRATFORD SCHOOL ADDITION AND REMODEL

LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

PARCEL 1 AS SHOWN ON A PARCEL MAP RECORDED OCTOBER 5, 1983 IN BOOK 519 OF MAPS PAGES 21 AND 22, RECORDS OF SANTA CLARA COUNTY.

PARCEL TWO:

AN EASEMENT FOR INGRESS AND EGRESS LYING IN THE SOUTHWESTERLY CORNER OF PARCEL 2 AS SHOWN ON THE PARCEL MAP FILED OCTOBER 5, 1983 IN BOOK 519 OF MAPS, PAGES 21 AND 22 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHWESTERLY CORNER OF PARCEL TWO; WHICH PARCEL IS SHOWN ON A PARCEL MAP RECORDED OCTOBER 5, 1983 IN BOOK 519 OF MAPS, PAGE 22; THENCE N. 10° 12' 21" WEST 44 FEET TO A POINT; THENCE N. 79° 38' 00" E. 16 FEET TO A POINT; THENCE S. 10° 12' 21" E. 44 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL TWO; THENCE S. 79° 38' 00" W. 16 FEET TO THE POINT OF BEGINNING.

APN: 083-06-015 (Affects a portion of said land) and
083-06-016 (Affects a portion of said land)

EXHIBIT “B”
LIST OF PUBLIC IMPROVEMENTS
STRATFORD SCHOOL ADDITION AND REMODEL



Stratford - 25 Corning Avenue (Off-site improvements)
Preliminary Engineer's Estimate of Probable Construction Costs

Prepared by Sterling Consultants:

Dated: 4/8/2021

Item Description	Item Quantity	Units	Unit Cost	Cost
Public Improvements				
1 Remove existing curb & gutter	126	LF	\$ 6.00	\$ 756.00
2 Remove existing concrete sidewalk & driveway aprons	1,326	SF	\$ 6.00	\$ 7,956.00
3 Remove existing Asphalt pavement along curb & gutter	126	SF	\$ 3.00	\$ 378.00
4 Sawcut existing pavement and sidewalk	130	LF	\$ 5.00	\$ 650.00
5 Full depth AC plug	126	SF	\$ 5.00	\$ 630.00
6 New 24' commercial driveway (S Abel St)	1	EA	\$ 7,500.00	\$ 7,500.00
7 New 32' commercial driveway (Corning Avenue)	1	EA	\$ 7,500.00	\$ 7,500.00
8 6" Std. Curb & Gutter along S Abel St & Corning Avenue	126	LF	\$ 20.00	\$ 2,520.00
9 Concrete sidewalk	700	SF	\$ 8.00	\$ 5,600.00
Sanitary Sewer				
10 4" SS Lateral including pavement restoration (within r/w only)	19	LF	\$ 100.00	\$ 1,900.00
11 4" SS Cleanout behind property line	1	EA	\$ 500.00	\$ 500.00
Fire Service				
12 Double-Check Detector Assembly ²	1	EA	\$ 8,000.00	\$ 8,000.00

PUBLIC IMPROVEMENTS SUBTOTAL \$ 43,890.00

Contingencies (10%) \$ 4,400.00

GRAND TOTAL (nearest 1000) \$48,300.00

Notes:

- Quantities based on offsite improvement plans prepared by Sterling Consultants dated 4/8/2021
- Assumed for 6" fire service. Actual size and model to be determined by fire sprinkler designed by deferred submittal

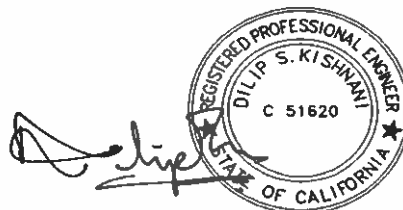


EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

STRATFORD SCHOOL ADDITION AND REMODEL

As evidence of understanding the provisions contained in this Agreement, and of the Developer's intent to comply with same, the Developer has submitted the below described security in the amounts required by this Agreement, and has affixed the appropriate signatures thereto:

PERFORMANCE BOND PRINCIPAL AMOUNT: \$48,300.00

Surety: SureTec Insurance Company

Attorney-in-fact: Mary Smith

Address: 3131 Camino del Rio North, Suite 1450
San Diego, CA 92108

MATERIAL AND LABOR BOND PRINCIPAL AMOUNT: \$48,300.00

Surety: SureTec Insurance Company

Attorney-in-fact: Mary Smith

Address: 3131 Camino del Rio North, Suite 1450
San Diego, CA 92108

BOND NO. 4442635
INITIAL PREMIUM: \$1,208.00 Two-Year Term
SUBJECT TO RENEWAL

CITY OF MILPITAS
STRATFORD SCHOOL ADDITION AND REMODEL IMPROVEMENTS
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and Stratford Schools Inc., a California corporation ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Stratford School addition and remodel ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated August 2, 2021 ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Improvement Agreement to provide a good and sufficient bond for performance of the Improvement Agreement, and to guarantee and warranty the Public Improvements constructed thereunder.

NOW, THEREFORE, Principal and SureTec Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of Texas, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sum of forty-eight thousand and three hundred dollars (\$48,300), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Improvement Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless City, its officers, employees, and agents, as stipulated in the Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

This bond is executed and filed to comply with Section 66499 et seq. of the Government Code of California as security for performance of the Improvement Agreement and security for the one-year guarantee and warranty of the Public Improvements.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Pasadena, CA, this 23rd day of July, 2021.

(Corporate Seal)

Stratford Schools, Inc.

Principal

By

Charles Barr

Title

EVP REAL ESTATE

(Corporate Seal)

SureTec Insurance Company

Surety

By

Mary Smith
Attorney-in-Fact MARY SMITH

(Attach Attorney-in-Fact Certificate)

Title Attorney-In-Fact

The rate of premium on this bond is \$25.00***** per thousand. The total amount of premium charges is \$ \$1,208.00*****.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

SureTec Insurance Company

3131 Camino del Rio North, Suite 1450

San Diego, CA 92108

(Name and Address of Agent or Representative for service of process in California, if different from above)

Same As Above

(Telephone number of Surety and Agent or Representative for service of process in California)

800-288-0351

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Los Angeles)
 On July 23, 2021 before me, Emily Preciado, Notary Public,
Date Here Insert Name and Title of the Officer
 personally appeared Mary Smith
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Emily Preciado
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

All Capacity Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

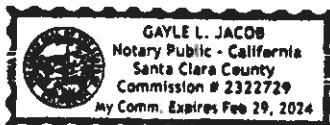
COUNTY OF Santa Clara

On July 30, 2021, before me, Gayle L. Jacob, Notary Public, personally appeared Charles Burr, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Gayle L. Jacob
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)
- ☐ Partner ☐ Limited
(s)
☐ General
- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Performance Bond
Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Mary Smith, Ronald C. Wanglin, Steve Brockmeyer, Emily Preciado

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for, providing the bond penalty does not exceed

Five Million and 00/100 Dollars (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the CEO, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its CEO, and its corporate seal to be hereto affixed this 2nd day of October, A.D. 2019.

State of Texas
County of Harris

ss:

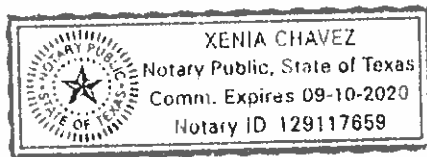


SURETEC INSURANCE COMPANY

By:

John Knox Jr., CEO

On this 2nd day of October, A.D. 2019 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is CEO of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Xenia Chavez, Notary Public
My commission expires September 10, 2020

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 23rd day of July, 2021, A.D.

M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity. 510039
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.

BOND NO. 4442635
INITIAL PREMIUM: Included In Performance Bond
SUBJECT TO RENEWAL

CITY OF MILPITAS
STRATFORD SCHOOL ADDITION AND REMODEL IMPROVEMENTS
LABOR AND MATERIAL BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and Stratford Schools, Inc., a California corporation ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Stratford School addition and remodel ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Public Improvements dated August 2, 2021 ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required to furnish a bond in connection with the Improvement Agreement providing that if Principal or any of its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for, or about the performance of the Public Improvements, or for any work or labor done thereon of any kind, or for amounts due under the provisions of Title 3 (commencing with section 9000) of Part 6 of Division 4 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, Principal and SureTec Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of Texas, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City and to any and all contractors, subcontractors, material suppliers, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Principal, the sum of forty-eight thousand and three hundred dollars, (\$48,300), said sum being not less than 100% of the total cost of the Public Improvements under the terms of the Improvement Agreement, we bind ourselves,

our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named herein, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

This bond is executed and filed to comply with Section 66499 et seq. of the California Government Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Improvement Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Pasadena, CA, this 23rd day of July, 2021.

(Corporate Seal)

Stratford Schools, Inc.
Principal
By [Signature] Charles Carr
Title R. E.V.P. REAL ESTATE

(Corporate Seal)

SureTec Insurance Company
Surety
By [Signature] MARY SMITH
Attorney-in-Fact
Title Attorney-In-Fact

(Attach Attorney-in-Fact Certificate)

The rate of premium on this bond is \$25.00***** per thousand. The total amount of premium charges is \$ 1,208.00*****.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)	SureTec Insurance Company 3131 Camino del Rio North, Suite 1450 San Diego, CA 92108
(Name and Address of Agent or Representative for service of process in California, if different from above)	Same As Above
(Telephone number of Surety and Agent or Representative for service of process in California)	800-288-0351

CIVIL CODE § 1189

State of California)
County of Los Angeles)
On July 23, 2021 before me, Emily Preciado, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Mary Smith
Name(s) of Signer(s)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature Emilio Pineda
Signature of Notary Public



OPTIONAL

Description of Attached Document

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

☐ Corporate Officer -- Title(s): _____
☐ Partner -- ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

 Signer Is Representing:

☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

All Capacity Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

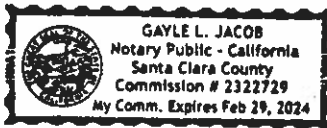
COUNTY OF Santa Clara

On July 30, 2021, before me, Gayle L Jacob, Notary Public, personally appeared Charles Barr, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER**DESCRIPTION OF ATTACHED DOCUMENT**

- ☐ Individual
☐ Corporate Officer
-
- ☐ Partner (s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other

Signer is representing:
Name Of Person(s) Or Entity(ies)

Labor and Material Bond
Title or Type of Document

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Mary Smith, Ronald C. Wanglin, Steve Brockmeyer, Emily Preciado

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for, providing the bond penalty does not exceed

Five Million and 00/100 Dollars (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the CEO, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its CEO, and its corporate seal to be hereto affixed this 2nd day of October, A.D. 2019.

State of Texas
County of Harris

ss:

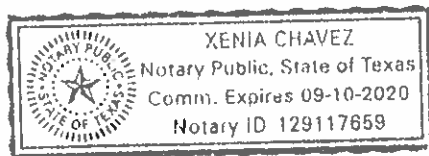


SURETEC INSURANCE COMPANY

By:

John Knox Jr., CEO

On this 2nd day of October, A.D. 2019 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is CEO of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Xenia Chavez, Notary Public
My commission expires September 10, 2020

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 23rd day of July, 2021, A.D.

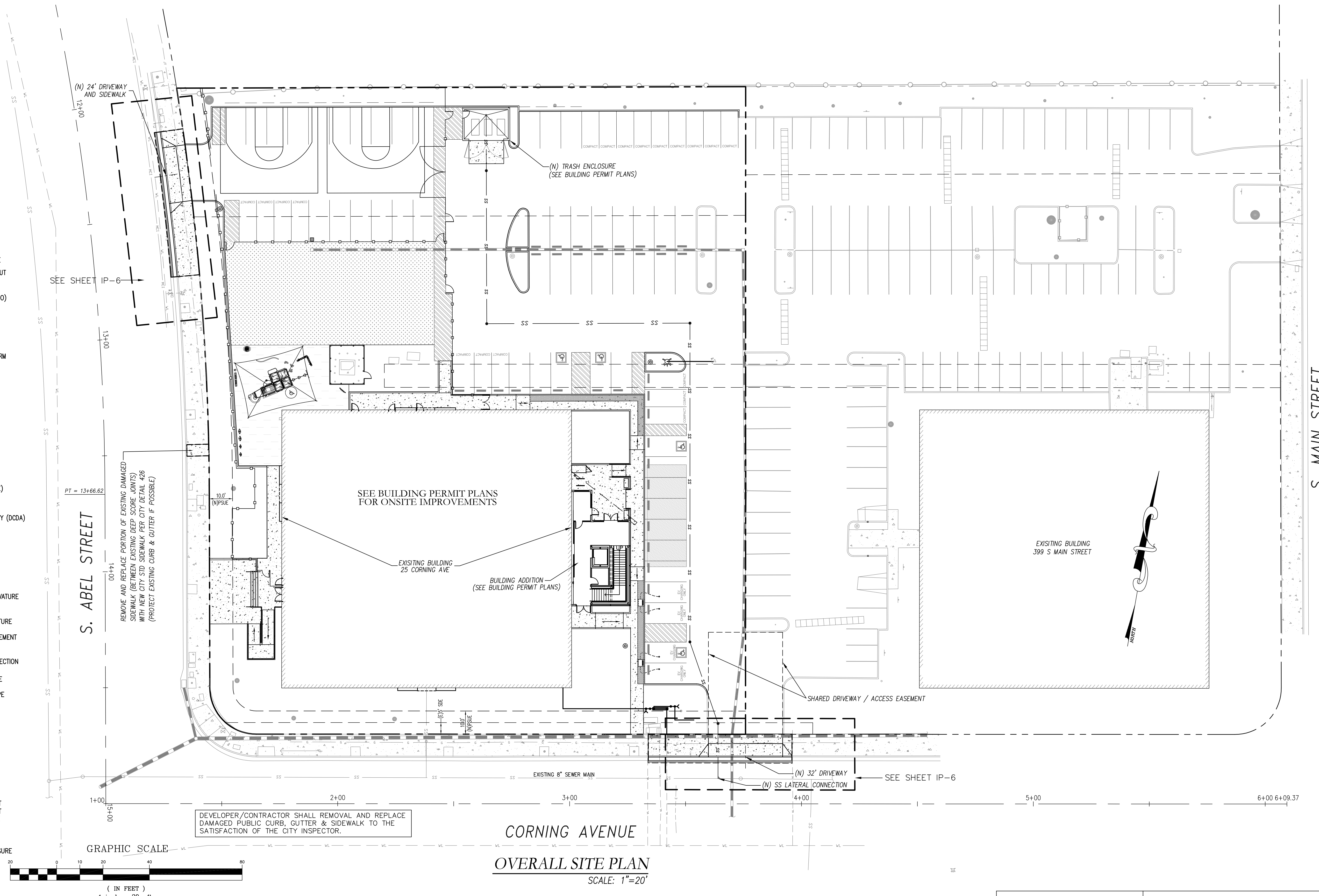
M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity. 510039
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.

SYMBOL	DESCRIPTION
	HINGE LINE/TOP/TOE
	CONCRETE V-DITCH
	GRADED SWALE
	CONTOUR LINES
	DAYLIGHT LINE/LIMIT OF GRADING
	EASEMENT LINE
	CENTERLINE (CL)
	FENCE (CHAIN LINK)
	DRIVEWAY
	CURB, GUTTER & SIDEWALK
	RETAINING WALL w/ SUB-DRAIN
	CITY STANDARD BARRICADE

AB	AGGREGATE BASE	(N)	NEW
AC	ASPHALT CONCRETE	N/B	NORTHBOUND
AD	AREA DRAIN	PA	PLANTER AREA
BC	BEGIN CURVE	P/L	PROPERTY LINE
BM	BENCHMARK	PCC	POINT OF COMPOUND CURVATURE
BMP	BEST MANAGEMENT PRACTICE	PERF.	PERFORATED
BOT.	BOTTOM	PIV	POST INDICATOR VALVE
BSW	BACK OF SIDEWALK	PRC	POINT OF REVERSE CURVATURE
BVC	BEGIN VERTICAL CURVE	PROJ.	PROJECTED
BW	BOTTOM OF WALL (EXPOSED)	PSDE	PRIVATE STORM DRAIN EASEMENT
CL	CENTER LINE	PUE	PUBLIC UTILITY EASEMENT
CB	CATCH BASIN	PV	PAVEMENT/ASPHALT GRADE
CO	CLEAN OUT	PVI	POINT OF VERTICAL INTERSECTION
CR	CURB RETURN	R=	RADIUS OF CURVE
DCDA	DOUBLE-CHECK DETECTOR ASSEMBLY	Δ =	INCLUDED ANGLE OF CURVE
DI	DRAIN INLET	L=	ARC LENGTH OF CURVE
EC	END CURVE	RCP	REINFORCED CONCRETE PIPE
EL	ELEVATION	RIM	RIM ELEVATION
EP	EDGE OF PAVEMENT	R/W	RIGHT OF WAY
EVC	END VERTICAL CURVE	S	SLOPE
EX, (E)	EXISTING	S/B	SOUTH BOUND
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT	SD	STORM DRAIN
FC	FACE OF CURB	SDCO	STORM DRAIN CLEANOUT
FDC	FIRE DEPARTMENT CONNECTION	SDE	STORM DRAIN EASEMENT
FF	FINISHED FLOOR	SDMH	STORM DRAIN MANHOLE
FG	FINISHED GRADE	SE	SIDEWALK EASEMENT
FH	FIRE HYDRANT	SF	SQUARE FEET
FL	FLOW LINE	S.O.	SIDE OPENING
FOGLN	FOG LINE (WHITE STRIPE)	SS	SANITARY SEWER
GB	GRADE BREAK	SSE	SANITARY SEWER EASEMENT
GI	GREASE INTERCEPTOR	SSCO	SANITARY SEWER CLEANOUT
GM	GAS METER	SSMH	SANITARY SEWER MANHOLE
GR	GRATE ELEVATION	STD	STANDARD
HP	HIGH POINT	TB	TOP OF BERM
IRR	IRRIGATION	TC	TOP OF CURB
JT	JOINT TRENCH	TCM	TREATMENT CONTROL MEASURE
LF	LINEAL FEET	TW	TOP OF WALL
UP	UP OF GUTTER	THP	TYPICAL
LP	LOW POINT	VC	VERTICAL CURVE
MAX	MAXIMUM	W	WATER LINE
MH	MANHOLE	WM	WATER METER

20



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**CITY OF MILPITAS
AGENDA REPORT
(AR)**

Item Title:	Approve and Authorize the City Manager to Execute Amendment No. 2 with CivicPlus LLC for SeeClickFix Subscription, Training, and Apple/Android Apps for a total Amount Not-to-Exceed \$109,969.18.
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	9/21/2021
Staff Contact:	Tony Ndah, Public Works Director, 408-586-2602
<u>Recommendation:</u>	Approve and authorize the City Manager to Execute Amendment No. 2 with CivicPlus LLC for SeeClickFix subscription, training, and Apple/Android Apps for a total amount not-to-exceed \$109,969.18.

Background:

On May 31, 2019, the City entered into a Professional Services Agreement with SeeClickFix, Inc., now CivicPlus LLC, for SeeClickFix subscription for only 20 user licenses, training, and Apple/Android apps to be provided to the City, with a term period of June 1, 2019 through May 31, 2024, and a maximum compensation amount of \$94,000.00. SeeClickFix powers the City's MyMilpitas App which provides online access to public issue reporting and data analysis. This application can be assessed online or through mobile apps and is the City's service request tool.

On April 9, 2021, the City entered into an Assignment and Assumption of Contract agreement due to the merger of SeeClickFix Inc. and Civic Plus, LLC. Amendment No. 1 was executed on April 16, 2021 to increase the compensation by \$6,000.00 to purchase an upgrade to provide SeeClickFix-hosted integration with Lucity (CentralSquare Technologies) with Service Requests and Work Orders.

Prior to the implementation of SeeClickFix/"My Milpitas App," work requests came through from phone calls or emails to the Public Works Department. Information Services also developed a web portal and Apple only app for residents to submit work requests. Work requests received through this portal and app would be screened by staff in the Information Services Department and then forwarded in an email to the Public Works Department. All work requests received by the Public Works Department would then be manually entered as work orders in Maintenance Connect, the City's previous work management system.

With the implementation of SeeClickFix/"My Milpitas App," residents are able to initiate work requests online or through an app, follow the status of the work request, and be notified when the work has been completed. The launch of the new online tools in November 2019 included a new website and mobile applications that enhanced customer service, providing easier access through smartphones, tablets, and greater online access to City services and information. Residents can easily provide City staff with pictures, videos, specific descriptions, and other valuable information needed to get their concerns submitted efficiently. Once logged, a request is assigned to the proper department or employee to take care of it, improving the efficiency in responding to issues that are being reported. This utilization of the application has reduced the need for staff to input information from online forms and has allowed for more effective response time and tracking of issues. Additionally, community members are also able to follow the progress of their request and see what types of issues are being reported citywide and staff can follow-up directly with the requestor and ask for clarification and provide status updates.

Analysis:

Amendment No. 2 will correct an error in the original Agreement in which the maximum compensation amount of the Agreement was misstated as \$94,000.00. The correct compensation of the Agreement is \$96,000.00.

Amendment No. 2 will also provide the City with SeeClickFix Unlimited Annual Licenses for the period of September 30, 2021 to May 31, 2024 and increases the total compensation by \$13,969.18.

Due to budgetary constraints and unfamiliarity with the system, staff entered into the current contract purchasing only 20 user accounts. However, after utilizing the system for over a year it became apparent that with a limited amount of user accounts staff cannot fully take advantage of the system's capabilities. For instance, work orders for other departments have to be handled via email versus within the system.

By moving to unlimited annual licenses, all managers within Public Works and applicable City Departments will have access to SeeClickFix and its reporting and data tools. The additional licenses will improve customer service delivery and will assist the managers in prioritizing work requests. The managers will get notifications of new work requests, status reports on work requests, and the ability to add comments and communicate directly with the requestor. In addition, the managers will receive daily reports and have the ability to escalate work orders depending on the urgency level and staff resources. Other features include setting internal service level agreements for each type of request, the ability to view requests by geographic region, using reports to determine staffing capacity, recategorizing long term projects, and reducing duplicate requests from the public.

Therefore, staff recommends the City Council approve Amendment No. 2 with CivicPlus LLC for a total contract amount not-to-exceed \$109,969.18.

Policy Alternatives:

Alternative 1: Do not approve and authorize the City Manager to execute Amendment No. 2.

Pros: The City will not spend \$13,969.18 for unlimited licenses and professional services.

Cons: The City would not be taking the additional steps needed to ensure all Public Works staff have access to SeeClickFix to respond to service requests, leading to loss of productivity for staff.

Reason not recommended: The proposed amendment would increase productivity for the staff and lead to better management of the City's work requests and improve customer service delivery to residents.

Fiscal Impact:

Sufficient funds for the project are available in the Public Works Facilities operating budget for this service.

California Environmental Quality Act:

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA as this action has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Recommendation:

Approve and Authorize the City Manager to Execute Amendment No. 2 with CivicPlus LLC for SeeClickFix Subscription, Training, and Apple/Android Apps for a total Amount Not-to-Exceed \$109,969.18.

Attachments:

1. Amendment No. 2 with CivicPlus LLC
2. Amendment No. 1 with CivicPlus LLC
3. Professional Services Agreement with SeeClickFix, Inc.



AMENDMENT NO. 2
TO THE PROFESSIONAL SERVICES AGREEMENT
WITH CIVICPLUS LLC, FOR
SEECCLICKFIX SUBSCRIPTION, TRAINING AND APPLE/ANDROID APPS

This Amendment No. 2 is entered into as of _____, (Effective Date) by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City") and **CivicPlus LLC**, a limited liability company (hereafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No. 2.

RECITALS:

WHEREAS, on May 31, 2019, the City entered into a Professional Services Agreement (hereinafter, the "Agreement") with SeeClickFix, Inc. for SeeClickFix Subscription, Training and Apple/Android Apps to be provided to the City, with a term period of June 1, 2019 through May 31, 2024, and a maximum compensation amount of \$94,000.00; and

WHEREAS, on April 9, 2021, the Parties entered into an Assignment and Assumption of Contract agreement effective as of October 9, 2019 due to the merger of SeeClickFix Inc. and CivicPlus, LLC, whereby the Agreement was assigned to and assumed by Consultant; and

WHEREAS, on April 16, 2021, the Parties entered into Amendment No. 1 to increase the compensation amount by \$6,000.00 to purchase an upgrade to provide SeeClickFix-hosted integration with Lucity (CentralSquare Technologies) with Service Requests and Work Orders; and

WHEREAS, the parties now wish to correct the error in the Agreement in which the maximum compensation amount of the Agreement was misstated as \$94,000.00. The correct maximum compensation of the Agreement was previously \$96,000.00 as per **Exhibit B- Schedule of Charge/Payments** of \$18,000.00 annually to a maximum of five (5) years, plus \$6,000 for the upgrades purchased via Amendment No. 1; and

WHEREAS, the parties also wish to amend the Agreement to provide SeeClickFix Unlimited Annual Licenses for the period of September 30, 2021 to May 31, 2024 and an increase in compensation of \$13,969.18, for a new total maximum compensation of **\$109,969.18**;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Subsection b of Section 2 **Compensation** of the Agreement is amended to read as follows: "In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **One Hundred Nine Thousand Nine Hundred Sixty-Nine Dollars and Eighteen Cents (\$109,969.18)**. Annual license fees will be paid within thirty (30) day of receipt of an invoice which includes a detailed descriptions of the work performed.

2. **Exhibit B, Schedule of Charges/Payments**, Exhibit B-1 (as adopted by Amendment No. 1) is hereby deleted in its entirety and replaced with Exhibit B-2 attached hereto and incorporated herein by this reference.
3. All other provisions of the Agreement not amended by this Amendment No. 2 shall remain in full force and effect.

[Signatures on Following Page]

**SIGNATURE PAGE TO AMENDMENT NO. 2
OF THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND CIVICPLUS LLC**

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2
as of the date first written above.

APPROVED BY:

CITY OF MILPITAS

Approved By:

Steven G. McHarris
City Manager

Effective Date

Approved As To Form:

Christopher J. Diaz
City Attorney

Approved:

Lauren Lai, CPA, MPA
Director of Finance/Risk Manager

Approved As To Content:

Tony Ndah
Director of Public Works

CIVICPLUS LLC

Signature

Name

Title

Date

EXHIBIT B-2**Revised Schedule of Charges/Payments**Contract Years One and Two

City shall pay Consultant \$18,000.00 annually to a maximum of two (2) years for the services listed below. Recurring annual product subscription fees are due upon renewal. Initial year payment due within forty-five (45) days of contract execution.

Item	Descriptions	QTY
Request Package	Collect requests and manage workflow all in one place with SeeClickFix web and mobile apps	1
Work	Internal communication tools for organizational and workflow management	1
Included Users	Distinct internal users included in the base price of the request package.	20
Marketplace Apps	Custom white label app in Apple App Store and Android Play store. SeeClickFix, Inc. agrees to the terms and conditions contained in the Apple Developer Program License Agreement	2
Integration	Integration of SeeClickFix to Lucidity	1
TOTAL ANNUAL FEE		\$18,000.00

Contract Years Three

City shall pay Consultant \$23,969.18 for the Unlimited User licenses listed below. Recurring annual product subscription fees are due upon renewal.

Item	Descriptions	QTY
Request Package	Collect requests and manage workflow all in one place with SeeClickFix web and mobile apps	1
Work	Internal communication tools for organizational and workflow management	1
Included Users	Distinct internal users included in the base price of the request package.	Unlimited
Marketplace Apps	Custom white label app in Apple App Store and Android Play store. SeeClickFix, Inc. agrees to the terms and conditions contained in the Apple Developer Program License Agreement	2
Integration	Integration of SeeClickFix to Lucidity, including Service Requests and Work Orders	1
TOTAL ANNUAL FEE		\$23,969.18

Contract Years Four, and Five

City shall pay Consultant \$25,000.00 annually to a maximum of two (2) years for the Unlimited User licenses listed below. Recurring annual product subscription fees are due upon renewal.

Item	Descriptions	QTY
Request Package	Collect requests and manage workflow all in one place with SeeClickFix web and mobile apps	1
Work	Internal communication tools for organizational and workflow management	1
Included Users	Distinct internal users included in the base price of the request package.	Unlimited
Marketplace Apps	Custom white label app in Apple App Store and Android Play store. SeeClickFix, Inc. agrees to the terms and conditions contained in the Apple Developer Program License Agreement	2
Integration	Integration of SeeClickFix to Lucidity, including Service Requests and Work Orders	1
	TOTAL ANNUAL FEE	\$25,000.00



AMENDMENT NO. 1
TO THE PROFESSIONAL SERVICES AGREEMENT
WITH CIVICPLUS LLC, FOR
SEECCLICKFIX SUBSCRIPTION, TRAINING AND APPLE/ANDROID APPS

This Amendment No. 1 is entered into as of Apr-16-2021, (Effective Date) by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City") and **CivicPlus LLC**, a limited liability company (hereafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No. 1.

RECITALS:

WHEREAS, on May 31, 2019, the City entered into a Professional Services Agreement (hereinafter, the "Agreement") with SeeClickFix, Inc. for SeeClickFix Subscription, Training and Apple/Android Apps to be provided to the City, with a term period of June 1, 2019 through May 31, 2024, and a maximum compensation amount of \$90,000.00; and

WHEREAS, on April 9, 2021, the Parties entered into an Assignment and Assumption of Contract agreement effective as of October 9, 2019 due to the merger of SeeClickFix Inc. and CivicPlus, LLC, whereby the Agreement was assigned to and assumed by Consultant; and

WHEREAS, the Parties now desire to amend the Agreement to increase the compensation amount by \$6,000.00 to purchase an upgrade to provide SeeClickFix-hosted integration with Lucity (CentralSquare Technologies) with Service Requests and Work Orders.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 2 Compensation. Section b. is amended to read as follows: In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Ninety-Six Thousand Dollars and Zero Cents (\$96,000.00)**. Annual license fees will be paid within thirty (30) day of receipt of an invoice which includes a detailed descriptions of the work performed.
2. Exhibit A, Scope of Services, is hereby amended to add Exhibit A-1 (April 2021 Service Enhancement), attached hereto and incorporated herein by reference.
3. Exhibit B, Schedule of Charges/Payments, is hereby deleted in its entirety and replaced with Exhibit B-1, Revised Schedule of Charges/Payments, attached hereto and incorporated herein by this reference.
4. All other provisions of the Agreement not amended by this Amendment No. 1 shall remain in full force and effect.

[Signatures on Following Page]

**SIGNATURE PAGE TO AMENDMENT NO. 1
OF THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND CIVICPLUS LLC**

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1
as of the date first written above.

APPROVED BY:

CITY OF MILPITAS

Approved By:

DocuSigned by:



Steven G. McHarris
City Manager

Apr-16-2021

Effective Date

Approved As To Form:

DocuSigned by:



Christopher J. Diaz
City Attorney

Approved:

DocuSigned by:



Lauren Lai, CPA, MPA
Director of Finance/Risk Manager

Approved As To Content:

DocuSigned by:



Tony Nolan
Director of Public Works

CIVICPLUS LLC

DocuSigned by:



Signature

Amy Vikander

Name

VP of Client Services

Title

Apr-16-2021

Date

EXHIBIT A-1 (April 2021 Service Enhancement)

1. City will be invoiced for the Total Investment - Year 1 (the sum of one-time costs and a prorated portion of the Annual Recurring Services) on June 4, 2021. The Annual Recurring Services subscription fee for the Products (as described above) included in this SOW are prorated and co-termed to align with the City's current billing schedule and the Annual Recurring Services amount will subsequently be added to City's Term and regularly scheduled annual invoices under the terms of the Agreement (shown in the table below).
2. Each year this SOW is in effect, a technology investment and benefit fee, as agreed to in the Agreement, will be applied to the Annual Recurring Services subscription fee.

QTY	Product Name	DESCRIPTION	PRODUCT TYPE	TOTAL
1.00	SeeClickFix Connector for Lucity	Upgrade to SeeClickFix-hosted integration with Lucity (CentralSquare Technologies) with Service Requests and Work Orders. Requires Lucity Citizen Portal REST API.	Renewable	USD 2,331.05
1.00	SeeClickFix Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable	USD -331.05

List Price - Year 1 Total	USD 8,741.44
Total Investment - Year 1	USD 2,000.00
Annual Recurring Services - Year 2	USD 2,000.00
Annual Recurring Services - Year 3	USD 2,000.00

EXHIBIT B-1**Revised Schedule of Charges/Payments**Contract Years One and Two

City shall pay Consultant \$18,000.00 annually to a maximum of two (2) years for the services listed below. Recurring annual product subscription fees are due upon renewal. Initial year payment due within forty-five (45) days of contract execution.

Item	Descriptions	QTY
Request Package	Collect requests and manage workflow all in one place with SeeClickFix web and mobile apps	1
Work	Internal communication tools for organizational and workflow management	1
Included Users	Distinct internal users included in the base price of the request package.	20
Marketplace Apps	Custom white label app in Apple App Store and Android Play store. SeeClickFix, Inc. agrees to the terms and conditions contained in the Apple Developer Program License Agreement	2
Integration	Integration of SeeClickFix to Lucidity	1
TOTAL ANNUAL FEE		\$18,000.00

Contract Years Three, Four, and Five

City shall pay Consultant \$20,000.00 annually to a maximum of three (3) years for the services listed below. Recurring annual product subscription fees are due upon renewal. Initial year payment due within forty-five (45) days of contract execution.

Item	Descriptions	QTY
Request Package	Collect requests and manage workflow all in one place with SeeClickFix web and mobile apps	1
Work	Internal communication tools for organizational and workflow management	1
Included Users	Distinct internal users included in the base price of the request package.	20
Marketplace Apps	Custom white label app in Apple App Store and Android Play store. SeeClickFix, Inc. agrees to the terms and conditions contained in the Apple Developer Program License Agreement	2
Integration	Integration of SeeClickFix to Lucidity, including Service Requests and Work Orders	1
TOTAL ANNUAL FEE		\$20,000.00

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of **May 31, 2019** ("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 SeeClickFix, Inc., a Delaware corporation with its principal place of business at 770 Chapel Street Third Floor New haven CT 06510 (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:

SeeClickFix Subscription, Training and Apple/Android Apps

(hereinafter referred to as "the Project").

B. Consultant 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 **Ninety-Four Thousand Dollars and Zero Cents (\$94,000.00)**. Annual license fees will be paid within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed.

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 **June 1, 2019** to **May 31, 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.

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 Consultant's choosing and reasonably acceptable to City), 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.

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. City Material Requirements.

[RESERVED]

16. 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.

17. 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. In the event City terminates this Agreement for convenience, the Consultant will not be obligated to refund any portion of the annual fee already paid by the City. If 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.

18 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.

19. Organization

Consultant shall assign a Project Manager for implementations and a Partnership Manager ongoing relationships.

20. Limitation of Agreement.

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

21. 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

1265 N. Milpitas Boulevard

Milpitas, California 95035

Attn: Tony Ndah, Director of Public Works

CONSULTANT:

SeeClick Fix

770 Chapel Street

New Haven CT, 06510

Attn: • Mike Nargi - Sr. Vice President

and shall be effective upon receipt thereof.

22. 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.

23. 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.

24. 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.

25. Severability

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

26. 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.

27. Non-Waiver

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

28. Time of Essence

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

29. 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.

30. 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.

31. 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.

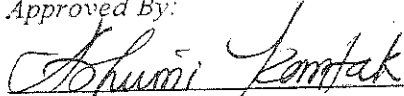
[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND SECLICKFIX, INC**

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

CITY OF MILPITAS

Approved By:



Julie Edmonds-Mares
City Manager

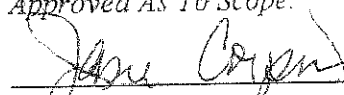
6/4/19
Date

Approved As To Form:



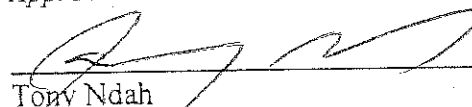
Christopher J. Diaz
City Attorney

Approved As To Scope:



Jane Corpus
Interim Director of Financial Services

Approved As To Content:



Tony Ndah
Director of Public Works

SECLICKFIX, INC.



Signature

PEN BERKOVITZ
Name

CEO
Title

5/30/19
Date

EXHIBIT A

Scope of Services

PROJECT BACKGROUND

To configure the SeeClickFix platform to meet the City's organization's needs, improve workflow efficiency and enhanced internal and external communication related to reporting of concerns from the public.

INTRODUCTION AND PLANNING

Implementation begins with an introduction call that includes City's project manager and his/her designee(s) and the following staff from Consultant:

- Program Lead –The Consultant's dedicated regional account manager for the project.
- Implementation Project Manager - the point of contact for the day-to-day activities of the implementation. An expert in both the tools of the SeeClickFix platform and the intricacies of municipal workflows. Implementation Project Manager will the implementation process, provide training and serve as a consultant to establish best practices in using SeeClickFix for City staff.

On the introduction call, we will review the City's goals, establish a timeline for launching SeeClickFix, determine which departments will use SeeClickFix, and field any questions. During the introduction call, City and Consultant will jointly determine if a Kickoff Presentation with the City's executive leadership team is recommended.

Following the introduction call, Consultant's implementation project manager will develop a proposed timeline for the project, outlining key milestones and deliverables within fifteen (15) calendar days of the introduction call.

ACCOUNT CONFIGURATION

During this phase, City will gain access to its SeeClickFix account and receive assistance from Consultant on how to best configure settings. The implementation project manager shall provide a one (1) hour training session via webinar on the backend controls. The webinar shall allow for up to twenty (20) attendees from the City.

The training shall include but not be limited to: setting up members, request types, automatic assignments and notifications, escalation contacts, timeline response goals, recurring data exports, preformatted response messages, custom emails, geographical areas for tracking and reporting, and mobile app buttons that link to webpages, call phone numbers, or display custom content.

City and Consultant will jointly identify the branding (name, images, description) for City's dedicated mobile app. Consultant's implementation project manager will provide the specific requirements needed, best practices for establishing branding, and examples from other partners. Consultant will provide City project manager or his/her designee with a proof showing how the branding will appear on iPhone and Android apps and devices. The mobile app has a minimum thirty (30) day timeline from approved branding proof to availability in stores.

Consultant will work with City project manager or his/her designee to document the technical requirements for the connection between the City's third-party work order system and the SeeClickFix platform. Consultant recommends having a test environment API for us to connect to so that we can work through the various settings of the integration without disrupting your live environment and workflow. SeeClickFix will then build the integration based on the requirements established. Once built, we will do user acceptance testing.

USER TRAINING AND TESTING

Consultant's implementation project manager will train City staff on how to effectively respond to service requests, understand the differences between internal and external communications, generate work orders, and create reports. The implementation project manager will provide web-based training to groups of users as specified by the City's Project Manager and train one or more City Staff who will then train the remainder of City staff.

After training, members on the City's account may begin testing the platform to better understand the many features and capabilities of the system. City's users will also provide feedback for any account configuration changes needed prior to launch to the Consultant. Consultant's system provides various levels of testing and soft launch flexibilities to best meet City's needs to begin using the platform and shall be mutually agreed upon by Consultant and City.

MARKETING PLANNING

Consultant will host a specific call to discuss launch and public announcement planning with relevant City Staff prior to the launch of the app. In addition, Consultant shall provide a variety of resources to assist in marketing, including a User Adoption Guide and downloadable materials available on the Consultant's website under Help Desk. Consultant's implementation project manager will work with City to successfully announce the launch of SeeClickFix.

EXHIBIT B

Schedule of Charges/Payments

City shall pay consultant \$18,000.00 annually to a maximum of five (5) years for the services listed below. Recurring annual product subscription fees are due upon renewal. Initial year payment due within forty-five (45) days of contract execution.

Item	Descriptions	QTY
Request Package	Collect requests and manage workflow all in one place with SeeClickFix web and mobile apps	1
Work	Internal communication tools for organizational and workflow management	1
Included Users	Distinct internal users included in the base price of the request package.	20
Marketplace Apps	Custom white label app in Apple App Store and Android Play store. SeeClickFix, Inc. agrees to the terms and conditions contained in the Apple Developer Program License Agreement	2
Integration	Integration of SeeClickFix to Lucidity	1
TOTAL ANNUAL FEE		\$18,000.00

EXHIBIT C

Special Terms and Conditions

A. Term and Termination

1. SeeClickFix and the City will implement the services described in the SSP as soon as reasonable. These Terms and Conditions will apply throughout the SSP-specified period following the Effective Date and be automatically renewed on an annual basis each succeeding year, and shall include changes to these Terms and Conditions which may be enacted by mutual agreement in writing by City and SeeClickFix.
2. *Survival.* The following Sections and any payment obligations hereunder shall survive any expiration or termination of service: A(3), C, D, E and F (except F.3).

B. Services of SeeClickFix

SeeClickFix will provide on a hosted, software-as-a-service basis, access to the Services described in this Agreement, via mobile applications, internet, and an embeddable interactive widget for public reporting, alerts on discussing non-emergency issues ("the Software"). Users will be able to interact with the Software and post various content including words, photos and videos. While the content of users of the Software is governed by SeeClickFix's published Terms of Use and Privacy Policy, SeeClickFix may not be able to control the exact nature of this content. SeeClickFix reserves the right to edit User Content, but does not have an obligation to edit the content. Although SeeClickFix may from time to time make enhancements or bug fixes to the Software, it is under no obligation to make any particular modifications, enhancements or bug fixes.

1. Service and Uptime

SeeClickFix shall use all reasonable commercial efforts to ensure that SeeClickFix's Service is available 99.9% of the time in any calendar month (excluding scheduled maintenance).

C. Ownership. With the exception of City's trademarks and logos,

SeeClickFix shall be the sole and exclusive owner of any and all SeeClickFix Materials, including the Software and all Intellectual Property Rights in and to them and their derivative works and improvements (as each of those terms is defined and applied under Title 17 and Title 35 U.S.C., respectively) by whomever developed or created them. No ownership of any SeeClickFix Materials including the Software or the Intellectual Property Rights in and to them shall be transferred to the City. "Intellectual Property Rights" shall mean any and all proprietary rights or moral rights in any trademarks, copyrights, trade secrets, patents and patent applications, renewals, extensions, continuations, divisions or reissues, in whole or in part, now or hereafter in force, and any foreign counterparts.

D. Exclusions of Warranties and Limitations of Liability.

EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, SECLICKFIX MAKES NO, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT) TO CLIENT, OR TO ANY OTHER PERSON, WITH RESPECT TO THE SERVICES, SECLICKFIX MATERIALS, OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER. NEITHER SECLICKFIX NOR THE CITY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, UNDER ANY THEORY OF LIABILITY (WHETHER LEGAL OR EQUITABLE).

E. RESERVED

F. General

1. *Independent Contractor Relationship.* SeeClickFix is acting as an independent contractor under these Terms and Conditions and nothing in these Terms and Conditions shall be deemed or construed to create the relationship of partnership, joint venture or employer-employee between the parties. Neither party has, and shall not hold itself out as having, any authority to enter into any contract or create any obligation or liability on behalf of, in the name of, or binding upon the other party.
2. *CityPublicity.* . Consultant shall not use, in its external advertising, marketing programs, or other promotional efforts, any names, data, insignia, written description, pictures, or other representation of the City, its officials, officers, employees and volunteers unless Consultant receives specific written authorization in advance from City. Any reference to the SeeClickFix Software or its features will be accompanied by a reference that it is provided by SeeClickFix.
3. *Headings and Captions.* The headings and captions of these Terms and Conditions are included for convenience only and shall not be considered in construction of the provisions hereof.
4. *Severability.* If any provision of these Terms and Conditions shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of these Terms and Conditions, which shall be construed as if such invalid or unenforceable provision had never been a part of these Terms and Conditions but in a manner so as to carry out as nearly as possible the parties' original intent.

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.

X ☒ 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 per accident 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 per accident 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):

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.

____ 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.

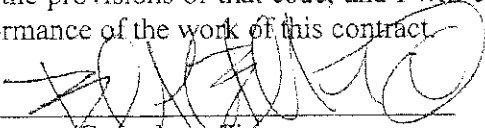
____ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

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 Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.



Contractor/Consultant Signature

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.

Surety Bonds:

___ Contractor shall provide the following Surety Bonds:

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.

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.

Other Insurance Provisions:

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

X_ Additional Insured Status:

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

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

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.

X__ Primary Coverage:

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

For any claims related to this contract, the Contractor's or Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

____ 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.

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.

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.



**CITY OF MILPITAS
AGENDA REPORT
(AR)**

Item Title:	Approve and Authorize the City Manager to Execute the Five-Year Professional Services Agreement with Echologics LLC for Pipeline Condition Assessment for the Not-to-Exceed Amount of \$260,000.00, Subject to the Annual Appropriation of Funds.
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	9/21/2021
Staff Contact:	Tony Ndah, Public Works Director, 408-586-2602
<u>Recommendation:</u>	Approve and authorize the City Manager to execute the five-year Professional Services Agreement with Echologics LLC for Pipeline Condition Assessment for the not-to-exceed amount of \$260,000.00, subject to the annual appropriation of funds.

Background:

The City of Milpitas on average delivers 11 million gallons of potable water per day to approximately 16,750 residential, commercial and institutional customers. The water is conveyed through 183 miles of underground mains ranging from 4-inches in diameter to 24-inches. As the water system begins to approach the end of its useful life, it becomes imperative to perform condition assessments to determine if environmental conditions have had an adverse effect on the remaining useful life of the system. Due to the variability of pipe materials and environmental factors, these condition assessments require on-going testing and monitoring to determine rates of deterioration and eventual failure.

On May 18, 2021, the City Council received a presentation on the Draft Milpitas Water Master Plan. The Draft Master Plan conducted a desktop condition assessment of the water system and recommended comprehensive condition assessments be conducted on representative portions of the distribution system. Comprehensive non-destructive (does not require shutdowns and physical sampling of the pipe) assessment technologies include but are not limited to acoustic surveys, electromagnetic surveys and leak detection monitoring. Approximately 75% of Milpitas' water distribution system is made up of asbestos cement pipe (ACP) constructed in the 1950s through 1970s. The system also contains polyvinyl chloride (PVC), concrete cylinder, cast iron, ductile iron, and steel pipelines. The estimated useful life of most pipe materials is 60 to 80 years but can be shorter or longer depending on factors associated to the environment in which the pipes are buried. A successful non-destructive condition assessment program utilizes water pipeline condition assessment technologies to better identify which pipe segment(s) need repair or replacement to prevent unscheduled shutdowns, water main breaks and associated non-revenue water loss.

This assessment will allow staff to better estimate the remaining useful life of the water mains and is a critical step towards determining the rate at which the City must replace water mains to ensure it receives the most value on its investment. In other words, prioritizing mains to be replaced prior to reaching their useful life but not replacing mains too soon.

Analysis:

On April 15, 2021, the City's Purchasing Division released RFP No. 2526 for Water Pipeline Condition Assessment. The RFP was publicly noticed in accordance with the City's Municipal Code, advertised on the City's website, emailed to companies registered with the City via ProcureNow.com, the City's eProcurement system). Additionally, the RFP was published on the City website.

Upon release, 241 firms received notification of the released RFP and 29 firms downloaded the RFP documents. One addendum was issued, and sixty-one clarifying questions were answered by City staff. One

firm, Echologics LLC, responded to the RFP by the published closing date of June 10, 2021. The proposal received was reviewed by Purchasing staff for compliance and responsiveness and was accepted. The City also received a “No Bid” notification. Staff followed up with the firm, which provided the notification to understand the decision not to submit a proposal in response to the RFP. The firm’s representative stated that the scope of work for non-destructive pipeline condition assessment for water pipelines is highly specialized work and only a few contractors are qualified.

Although only one proposal was submitted, City staff evaluated the proposal. After an initial evaluation by the City staff members who comprised the evaluation committee, Echologics LLC was invited to and attended video interview (due to the on-going Shelter-in-Place order) to gather further information regarding their proposal and offer the evaluation committee the opportunity to ask clarifying questions. As the final step, staff contacted three references listed for Echologics LLC as required in the RFP. The responses were overwhelmingly positive with Echologics’ professionalism, timeliness, communication and coordination all categorized as being excellent. The reference agencies stated Echologics pricing was reasonable for the highly specialized work and found the data generated from the testing to be very helpful in identifying and ultimately fixing water leaks. Additionally, one respondent stated they have taken the additional step to verify the results provided by Echologics with an ultrasonic gauge and have found their results to be accurate.

Based on the evaluation of Echologics’ proposal, the interview and references, staff recommends award of agreement of this highly specialized scope of work to Echologics.

Policy Alternatives:

Alternative 1: Do not approve the agreement and reissue the RFP.

Pros: The City may be able to receive more than one proposal.

Cons: The City would have to delay the condition assessments of its underground water pipe system.

Reason not recommended: Given the limited number of firms, which are qualified to perform this highly specialized work, staff recommends award of agreement to Echologics, LLC.

Fiscal Impact:

Sufficient funds for the project are available in the Capital Improvement Program 7135 – Water Leak Detection and Condition Assessment Program, which is funded by water capital surcharge. The available balance is \$419,244 as of September 13, 2021.

California Environmental Quality Act:

The action being considered is exempt from the California Environmental Quality Act (“CEQA”) per section 15306 of CEQA Guidelines, which exempts projects related to information collection that do not result in the in serious or major disturbance to environmental resources.

Recommendation:

Approve and authorize the City Manager to execute the five-year Professional Services Agreement with Echologics for Pipeline Condition Assessment for the not-to-exceed amount of \$260,000.00, subject to the annual appropriation of funds.

Attachments:

1. Professional Services Agreement with Echologics LLC

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

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 **Echologics LLC**, a corporation, with its principal place of business at **1200 Abernathy Road Suite 1200, Atlanta, GA 30328** (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:

WATER PIPELINE CONDITION ASSESSMENT
(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 **Two Hundred Sixty Thousand Dollars and Zero Cents (\$260,000.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

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

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

4. Maintenance of Records.

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

5. Term.

The term of this Agreement shall be from **The date first written above to July 31, 2026**, 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.

For a period of one (1) year following the completion of the services, Consultant warrants that all services provided by it to City under this Agreement are performed in a workmanlike manner. Consultant's entire obligation and City's exclusive remedy with respect to the service warranties set forth in this provision shall be the re-performance of the applicable non-conforming service(s).

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 third-party 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 directly arising out of, pertaining to, or incident to any negligence 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.

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.

c. Consultant's indemnification obligation arising out of this Agreement shall survive expiration or termination of this Agreement.

d. Consequential Damages: EXCEPT FOR CLAIMS COVERED BY THE INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS AGREEMENT, IN NO EVENT WILL CONSULTANT BE LIABLE TO CITY FOR ANY LOST REVENUE, LOST PROFITS, LOST SAVINGS OR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

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. City Material Requirements.

[RESERVED].

16. 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.

17 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.

18 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.

19. Organization

Consultant shall assign **Harris Sidiqqi** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

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

21. 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

1265 N Milpitas Boulevard

Milpitas, California 95035

Attn: Director of Public Works

CONSULTANT:

Echologics LLC

1470 South Vintage Avenue

Ontario, CA 9176

Attn: Ken Malone Regional Manager Water
Management Solutions,

and shall be effective upon receipt thereof.

22. 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.

23. 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.

24. 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.

25. Severability

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

26. 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.

27. Non-Waiver

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

28. Time of Essence

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

29. 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.

30. 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.

31. 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 ECHOLOGICS LLC**

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

CITY OF MILPITAS
Approved By:

Echologics LLC

Steven G. McHarris, City Manager

Signature

Date

Name

Approved As To Form:

Title

Christopher J. Diaz, City Attorney

Date

Approved:

DIR Registration Number (If Applicable)

Lauren Lai, CPA, MPA
Finance Director/Risk Manager

Approved As To Content:

Tony Ndah, Director of Public Works

EXHIBIT A

Scope of Services

PROJECT MANAGEMENT

TASK 1 – PROJECT MANAGEMENT AND COORDINATION

Objective: Use project management tools, including systems for tracking work progress and expenditures, proactive communications, "right" staffing, and quality assurance and quality control (QA/QC) plan to keep project on schedule and on budget.

- A. Provide a Project Management Plan to direct, coordinate, and monitor the activities of the project with respect to budget, schedule, and contractual obligations.
- B. Prepare and issue agendas and minutes for all meetings. Provide monthly invoices accompanied with a description of the work accomplished during the invoice period, a spreadsheet summary of task budgets, and an update of the project schedule. Schedule updates shall include a description of all changes to the schedule, reasons for the change, and mitigation measures, when necessary, to bring the project back to the baseline schedule. The Consultant shall ensure that efforts of City personnel and team members remain coordinated regarding study direction, objectives, and deliverables.
- C. Initiate the project with a kickoff workshop with City staff, within one to two weeks after receiving notice to proceed, to discuss the initial goals and priorities of the study, parameters, scheduling constraints, roles and responsibilities, expectations, and other relevant information regarding services required by this RFP to perform the non-destructive and non-invasive pipeline assessment. The Consultant shall provide a detailed schedule of the project to be reviewed, revised, and updated.
- D. Consultant shall also conduct regular conference calls and as-needed face-to-face meetings (up to monthly, depending on project needs) to review project status. Provide internal quality assurance and quality control (QA/QC) and provide review of the documents prior to submitting them to the City.
- E. The City will provide the Consultant with the location of the mains to be surveyed, along with access points and fittings accessible for testing. The Consultant shall work with City staff to select appropriate pipeline access sites.

Deliverables: Meeting agendas and minutes, monthly status reports, monthly invoices and project schedule, and kickoff workshop presentation materials.

TASK 2: DATA COLLECTION AND ANALYSIS

Objective: Evaluate and review available information on the existing water system that defines its capabilities and conditions.

- A. In order to better understand the City's current water system and forecast the time schedule/level of effort needed to complete the condition assessment, the Consultant shall coordinate with the City for access to, but not limited to the following: GIS data, Water Master

Plan, Utility Depreciation Study Report, Leak Detection Study Report, as-builts, system pressure and zone maps, pump curves, water break data, Corrosivity Study, Urban Water Management Plan, Water Quality Management Plan, relevant maps, water billing records, water supply records, and water quality data. The City has both AutoCAD and GIS mapping of the water distribution. The information provided shall be reviewed by the Consultant to determine whether it is sufficient for completion of the project objectives.

- B. The Consultant shall conduct interviews with Public Works staff to review data collected.
- C. The Consultant shall prepare an initial data request that will be submitted to the City prior to the kick-off meeting.
- D. Consultant's Scope of Supply is shown in **Attachment "A" – Scope of Supply**

Deliverables: Data request with status updates on the data still outstanding.

TASK 3 – NON-DESTRUCTIVE AND NON-INVASIVE PIPE CONDITION ASSESSMENT

Objective: The Consultant shall provide water main condition assessment services to approximately 2 miles of water mains maintained by the City. The alignments to be assessed are comprised primarily of 12-inch ACP but may include sections of steel, CIP or DIP pipe materials.

It is the responsibility of the Consultant to demonstrate the methodology being proposed, is the most effective method in determining the current condition of waterlines.

- A. Mobilize the required crew and equipment to the job site to commence work on the agreed date.
- B. Conduct non-destructive and non-invasive inspections of water pipes using visual, sounding, acoustic, electromagnetic, and other means. Demonstrate use of reliable methods of remote, free-swimming, and/or tethered tools under various operating conditions.
- C. Review information on the City's waterline distribution system and the water utility asset condition assessment from the updated Water Master Plan
- D. Develop a work plan for performing the work on each selected pipe segment.
- E. Determine the appropriate survey and inspection protocols, means, and methods for each pipe segment selected for inspection and evaluation.
- F. Provide leak detection of water pipes to within a foot or better by visual, acoustic, electromagnetic, or other means.
- G. Provide wall thickness testing by visual, acoustic, electromagnetic, or other technologies.
- H. Establish baseline conditions for pipe segments and identify deteriorated segments.
- I. Determine remaining service life of pipe segments.
- J. Deliver data, analyses, and reports in various hardcopy and electronic formats, including input into the City's asset management, CMMS, and GIS systems.
- K. Determine the existing condition of the inspected waterlines. Identify relative flow rates, leaks, and other deficiencies. Use a risk-based evaluation process to assess future performance.
- L. Consultant's execution plan is shown in **Attachment "B" – Execution Plan**.

Deliverables: Technical memorandum that details the completed non-destructive and non-invasive pipe condition assessment.

TASK 4 – ANALYSIS AND REPORTING

Objective: The Consultant shall calculate remaining service life based on findings and prepare final report on findings.

- A.** Upon completion of the field testing, the recorded data files will be subject to more detailed analysis to help refine the on-site findings, and to reveal any leaks that may be present.
- B.** A report on findings will be prepared, indicating the locations of any leaks identified, along with an estimate of the average remaining service life.
- C.** A draft report will be delivered within six (6) weeks of completion of the field testing. Upon receipt of the draft report, the City will have two (2) weeks to review the report and present the Consultant with any requests for correction or modification. Any comments received by the Consultant during this review period will be considered when preparing the final report. The final report will be issued within two (2) weeks of the end of the review period.

Deliverables: Final report indicating leak locations and/or pipe condition indications. The report shall also provide an accurate measurement of the remaining wall thickness of selected pipes in the City's water system.

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.

Site Inspection - First Day	\$5,050.00	Lump Sum
Site Inspection - Additional Days	\$2,250.00	Per Day
ePulse pipe wall stiffness testing metallic and asbestos cement pipe - under 16" in diameter - first two (2) miles	\$52,000.00	Lump Sum
ePulse pipe wall stiffness testing metallic and asbestos cement pipe - under 16" in diameter - additional footage	\$3.97	Per foot

Echologics reserves the right to increase the proposed rate by not more than 2% year over year for work in future years.

EXHIBIT C
Activity Schedule

[RESERVED]

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.

X 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:

X 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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with WeHOPE for 52 additional mobile shower and laundry sessions of services for a total amount not to exceed \$71,552
Category:	Consent Calendar-Community Development
Meeting Date:	9/21/2021
Staff Contact:	Sharon Goei, Director of Building Safety and Housing, 408-586-3260
Recommendation:	Approve and authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with WeHOPE for 52 additional mobile shower and laundry sessions of services for a total amount not to exceed \$71,552.

Background:

At the September 7, 2021 City Council meeting, Council provided direction to staff to continue the mobile shower and laundry program for an additional 12 months. To pursue a contract extension with the nonprofit service provider, WeHOPE, for 52 additional mobile shower and laundry sessions, staff is seeking Council approval of the amendment to the Professional Services Agreement with WeHOPE as well as authorization for the City Manager to execute the amendment.

Analysis:

City Council received the report on the pilot mobile shower and laundry program, provided direction to staff to continue the program for 12 months, and asked staff to look into other location options for the dates surrounding the events on Main Street as part of the Main Street Revitalization efforts. Due to each location's ability to meet infrastructure and utility requirements, the service provider cost varies. When utility hook-ups for electrical, water, and sanitary disposal are provided, the cost is \$822 per session. When the unit is self-sufficient, it carries 600 gallons of water, stores dirty water, and runs generator for power. This increase wear and tear on the truck and equipment caused by traveling with the weight of the water. As a self-sufficient mobile shower and laundry unit, the service provider cost is \$965 per session, and the total cost for 52 sessions is \$50,180.

To account for possible charges due to alternate locations, staff recommends amending the Professional Services Agreement by increasing the Agreement not-to-exceed amount by \$50,180. This amends the total Agreement not-to-exceed amount from \$21,372 to \$71,552. The Milpitas Police Department indicated that reallocating \$50,180 of the California Board of State and Community Corrections (BSCC) grant funding toward the mobile shower and laundry program will not have any significant impact to the Police Department. This level of funding ensures that weekly Sunday services continue on September 26, 2021 and operate until 52 sessions have been provided.

Fiscal Impact:

As City Council provided direction to extend the mobile shower and laundry program for 12 months and utilize the BSCC grant, the fiscal impact is a maximum of \$50,180 reduction to the grant balance.

California Environmental Quality Act:

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3). Further, the approval of this amendment is also exempt from environmental review under CEQA Guideline

15301 as a mobile shower is the operation and maintenance of existing public facilities to allow a negligible expansion of use. The approval of the amendment is also exempt pursuant to CEQA Guideline 15311 as the placement of a temporary accessory structure which is similar to the list of items noted at CEQA Guideline 15311 which specifically includes the placement of temporary restrooms and other temporary use items.

Recommendation:

Approve and authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with WeHOPE for 52 additional mobile shower and laundry sessions of services for a total amount not to exceed \$71,552.

Attachments:

1. Amendment No. 1 to Professional Services Agreement with WeHOPE
2. Professional Services Agreement with WeHOPE



**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
WITH
WEHOPE INC.
FOR
MOBILE SHOWER, LAUNDRY, AND CASE MANAGEMENT SERVICES FOR
UNHOUSED RESIDENTS**

This Amendment No. 1 is entered on September 24, 2021 (effective date), by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City"), and **WeHOPE Inc.**, a non-profit corporation (hereafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No. 1.

RECITALS

WHEREAS, on February 12, 2021, the Parties entered into a Professional Services Agreement for Mobile Shower, Laundry, And Case Management Services For Unhoused Residents (the "Agreement") with a compensation amount not to exceed \$21,372.00, and a term period of February 12, 2021 to the completion of twenty-six sessions of services provided; and

WHEREAS, the Parties now desire to amend the Agreement by extending the term period expiration date to September 25, 2022 and increase the Agreement not-to-exceed amount by \$50,180.00 to allow for fifty-two additional sessions of services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 2 Compensation paragraph "b" is hereby amended to read as follows:

"In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Seventy-One Thousand Five-Hundred Fifty-Two Dollars and Zero Cents (\$71,552.00)**. 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

2. Section 5 Time of Performance is hereby amended to read as follows:

"The term of this Agreement shall be from **February 12, 2021 to September 25, 2022**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the Agreement. Specific milestones for performance are included in the "Activity Schedule" attached as Exhibit C (Revised September 2021).

3. Exhibit A is hereby deleted and replaced in its entirety by Exhibit A – Scope of Services (Revised September 2021), attached hereto and incorporated herein by this reference.

4. Exhibit B is hereby deleted and replaced in its entirety by Exhibit B – Schedule of Charges/Payments (Revised September 2021), attached hereto and incorporated herein by this reference.
5. Exhibit C is hereby deleted and replaced in its entirety by Exhibit C – Activity (Revised September 2021), attached hereto and incorporated herein by this reference.
6. All other provisions of the Agreement not amended by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 as of the date first written above.

**SIGNATURE PAGE TO AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
WITH
WEHOPE INC.
FOR
MOBILE SHOWER, LAUNDRY, AND CASE MANAGEMENT SERVICES FOR
UNHOUSED RESIDENTS**

CITY OF MILPITAS

Approved By:

Steven G. McHarris, City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved:

Lauren Lai, CPA, MPA
Risk Manager/Director of Finance

Approved as to Content:

Sharon Goei
Director of Building Safety and Housing

WEHOPE INC.

Signature

Name

Title

Date

EXHIBIT A

Scope of Services (Revised September 2021)

Description of the Project:

WeHOPE Inc. will implement Dignity on Wheels to provide mobile shower, laundry, and case management services to homeless and unsheltered persons in Milpitas. Operating one day per calendar week at a single site in Milpitas, WeHOPE Inc. will provide drop-in shower services for up to forty-two (42) clients and drop-in laundry services of up to sixteen (16) single loads of laundry per four-hour session. Each session will consist of one six-hour session in either the morning or afternoon hours. Clients will be served for four hours during each session as there will be two hours dedicated for set-up and shutdown.

Clients requesting a shower will receive a provisional towel and bathmat, which must be returned after use. Shower clients will be offered hygiene kits, which may include socks, toothbrush, toothpaste, deodorant, lotion, mouthwash or other grooming items. Clients who are also requesting laundry service will be offered a pair of sweatpants and t-shirt as needed, which should be returned. Clients will have the opportunity to meet with WeHOPE staff to assess unmet needs and access community resources.

WeHOPE staff will manage the Dignity on Wheels service and oversee the following:

- a. Formulating goals and objectives,
- b. Establishing personnel policies,
- c. Overseeing the daily operation of each Dignity on Wheels' event, including without limiting, facility usage, and
- d. Respectfully directing all staff and volunteers working at a Dignity on Wheels event, including those staff and/or volunteers of the host site.

Activity #1: Provide shower services to homeless individuals

WeHOPE will provide access to hot water showers to homeless individuals. Clients are provided 15 minutes in the shower room, with seven minutes of shower time. Towels, hygiene kits, flip flops, and a change of clothes will be provided as needed.

Activity #2: Provide laundry services to homeless individuals

WeHOPE will provide laundry services to homeless individuals. WeHOPE will provide client with laundry bag, which clients fill and return to WeHOPE staff. Staff will launder the clothing and return it to the client. A change of clothes will be provided as needed.

Activity #3: Provide community resources and referrals to homeless individuals

WeHOPE will provide community resources and referrals to homeless individuals who desire to be connected to services and case management. WeHOPE will provide clients who are not already connected with individualized support to connect them with resources they need.

Program Support from City Staff:

CITY will identify an appropriate location, promote the program, coordinate the service with Santa Clara County unhoused outreach and assessment efforts, communicate regularly with WeHOPE Inc. staff, review reports provided by WeHOPE, process payments, and be on call during the session to ensure proper access to water, sewer, and electric utilities.

Reporting:

Project objectives and outcomes will be measured on a quarterly basis as detailed in Exhibit C.

Additional Provisions:

WeHOPE will enter data into Homeless Management Information System (HMIS) only for clients working individually with WeHOPE staff (specifically providing clients with community resources and referrals).

EXHIBIT B

Schedule of Charges/Payments (Revised September 2021)

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.

CITY will provide a one-time payment at the start of the agreement in the amount of Ten Thousand Six Hundred Eighty-Six Dollars and Zero Cents (\$10,686.00) to cover expenses for thirteen (13) sessions (approximately three months). Within fifteen (15) days from the end of each month during the term of this AGREEMENT, WeHOPE will submit backup documentation for costs incurred in the prior month. Upon receipt of complete backup documentation, CITY will provide funds for the next month's expenditures. WeHOPE will report expenditures to the CITY as part of its quarterly and annual reports outlined in Exhibit C.

EXHIBIT C

Activity Schedule (Revised September 2021)

Project objectives and outcomes will be measured on a quarterly basis and should include, at a minimum, the following:

- Number of sessions provided per quarter.
- Number of showers provided each session.
- Number of laundry loads provided each session.
- Number of total unduplicated clients served to date.
- Number of clients who utilized DOW referral services.

Consultant will submit a Quarterly Performance Report for the following periods:

Report No. 1: Ninety (90) days after the first session

Report No. 2: Additional reports to follow quarterly

Activities and outputs will be tracked and reported quarterly to the City's Project Manager. Quarterly Performance Reports are due by Consultant ten (10) business days at the conclusion of each quarter. An annual performance report will be due at the end of one year or the completion of fifty-two (52) sessions (whichever comes first) and upon the end of the Agreement term.

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of February 12, 2021 (“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 WeHOPE Inc., a non-profit corporation with its principal place of business at 1854 Bay Road, East Palo Alto, CA 94303 (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:

Mobile shower, laundry, and case management services for unhoused residents (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 **\$21,372**. 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. Time of Performance.

The term of this Agreement shall begin on the **“Effective Date” and run until twenty-six sessions have been provided** unless terminated earlier as provided herein. The City reserves the right to review the Consultant’s performance after three months and cancel all or part of the Agreement. Specific milestones for performance are included in the “Activity Schedule” attached as Exhibit C.

6. Delays in Performance.

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

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

7. Compliance with Law.

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

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

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

8. Standard of Care

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

9. Assignment and Subconsultant

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

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

10. Independent Consultant

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

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

12. Indemnification.

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

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

13. California Labor Code Requirements.

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

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

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

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

14. Verification of Employment Eligibility.

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

15. City Material Requirements.

[RESERVED]

16. 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.

17 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.

18. 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.

19. Organization

Consultant shall assign Anita Blount as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

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

21. 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: Robert Musallam

CONSULTANT:

WeHOPE Inc.

1854 Bay Road

East Palo Alto, CA 94303

Attn: Thomas J. Clark, Jr.

and shall be effective upon receipt thereof.

22. 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.

23. 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.

24. 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.

25. Severability

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

26. 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.

27. Non-Waiver

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

28. Time of Essence

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

29. 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.

30. 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.

31. 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]

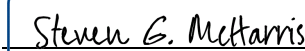
**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND WEHOPE INC.**

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

CITY OF MILPITAS

Approved By:

DocuSigned by:



Steven G. McHarris, City Manager

Feb-16-2021

Date

Approved As To Form:

DocuSigned by:



Christopher J. Diaz, City Attorney

Approved:

DocuSigned by:



Walter C. Rossmann, Risk Manager/Director
of Finance

Approved As To Content:

DocuSigned by:



Sharon Goel, Director of Building Safety and
Housing

WeHOPE Inc.

DocuSigned by:



Signature

Paul Bains

Name

President

Title

Feb-10-2021

Date

DIR Registration Number (If Applicable)

EXHIBIT A

Scope of Services

Description of the Project:

WeHOPE Inc. will implement Dignity on Wheels to provide mobile shower, laundry, and case management services to homeless and unsheltered persons in Milpitas. Operating one day per week at a single site in Milpitas, WeHOPE Inc. will provide drop-in shower services for up to 42 clients and drop-in laundry services of up to 16 single loads of laundry per four-hour session. WeHOPE Inc. commits to provide twenty-six sessions under this agreement. Each session will consist of one six-hour session in either the morning or afternoon hours. Clients will be served for four hours during each session as there will be two hours dedicated for set-up and shut-down.

Clients requesting a shower will receive a provisional towel and bathmat, which must be returned after use. Shower clients will be offered hygiene kits, which may include socks, toothbrush, toothpaste, deodorant, lotion, mouthwash or other grooming items. Clients who are also requesting laundry service will be offered a pair of sweatpants and t-shirt as needed, which should be returned. Clients will have the opportunity to meet with WeHOPE staff to assess unmet needs and access community resources.

WeHOPE staff will manage the Dignity on Wheels service and oversee the following:

- a. Formulating goals and objectives,
- b. Establishing personnel policies,
- c. Overseeing the daily operation of each Dignity on Wheels' event, including without limiting, facility usage, and
- d. Respectfully directing all staff and volunteers working at a Dignity on Wheels event, including those staff and/or volunteers of the host site.

Activity #1: Provide shower services to homeless individuals

WeHOPE will provide access to hot water showers to homeless individuals. Clients are provided 15 minutes in the shower room, with seven minutes of shower time. Towels, hygiene kits, flip flops, and a change of clothes will be provided as needed.

Activity #2: Provide laundry services to homeless individuals

WeHOPE will provide laundry services to homeless individuals. WeHOPE will provide client with laundry bag, which clients fill and return to WeHOPE staff. Staff will launder the clothing and return it to the client. A change of clothes will be provided as needed.

Activity #3: Provide community resources and referrals to homeless individuals

WeHOPE will provide community resources and referrals to homeless individuals who desire to be connected to services and case management. WeHOPE will provide clients who are not already connected with individualized support to connect them with resources they need.

Program Support from City Staff:

CITY will identify an appropriate location, promote the program, coordinate the service with Santa Clara County unhoused outreach and assessment efforts, communicate regularly with WeHOPE Inc. staff, review reports provided by WeHOPE, process payments, and be on call during the session to ensure proper access to water, sewer, and electric utilities.

Cost Reimbursement:

CITY will provide a one-time payment at the start of the contract in the amount of \$10,686 to cover expenses for thirteen sessions (approximately three months). Within 15 days from the end of each month during the term of this AGREEMENT, WeHOPE will submit backup documentation for costs incurred in the prior month. Upon receipt of complete backup documentation, CITY will provide funds for the next month's expenditures. WeHOPE will report expenditures to the CITY, under provisions as set forth in Exhibit B.

Reporting:

Project objectives and outcomes will be measured on a quarterly basis as detailed in Exhibit C.

Additional Provisions:

WeHOPE will enter data into Homeless Management Information System (HMIS) only for clients working individually with WeHOPE staff (specifically providing clients with community resources and referrals).

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.

EXHIBIT C

Activity Schedule

Project objectives and outcomes will be measured on a quarterly basis and should include, at a minimum, the following:

- Number of sessions provided per quarter.
- Number of showers provided each session.
- Number of laundry loads provided each session.
- Number of total unduplicated clients served to date.
- Number of clients who utilized DOW referral services.

Consultant will submit a Quarterly Performance Report for the following periods:

Report #1: 90 days after the first session

Report #2: Additional reports to follow quarterly

If the contract is extended, activities and outputs will be tracked and reported quarterly.

Quarterly Performance Reports are due by Consultant 10 business days at the conclusion of each quarter. If the contract is extended beyond the initial 6-month term, an annual performance report will be due at the end of one year or the end of the contract term, whichever comes first.

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.

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

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

Automobile Liability:

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

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

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

Professional Liability (Errors and Omissions):

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

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

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

Workers' Compensation Insurance:

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.

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.

___ **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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Monthly Report for Unhoused Services
Category:	Consent Calendar-Community Development
Meeting Date:	9/21/2021
Staff Contact:	Sharon Goei, Building Safety and Housing Director, 408-586-3260
Recommendation:	Receive June 2021 report for unhoused services.

Background:

On November 10, 2020, the City Council approved and authorized staff to enter into an agreement for homeless outreach, assessment, and street-based case management services with Santa Clara County Office of Supportive Housing.

On December 1, 2020, the City Council directed staff to implement a six-month pilot mobile shower and laundry Dignity on Wheels program with WeHOPE.

On March 1, 2021, the County's Homeless Engagement and Access Team (HEAT), via Abode Services, began conducting outreach to engage and provide resources to the City's unhoused residents.

The nonprofit service provider, WeHOPE, began providing mobile shower and laundry services every Sunday starting March 21, 2021 on the site on Winsor Street, immediately south of the Milpitas Library.

At the March 2, 2021 City Council meeting, Councilmember Chua presented a sample monthly assessment progress report and requested staff provide a way to monitor progress in a similar manner.

On September 7, 2021, the City Council directed staff to continue the mobile shower and laundry program for an additional 12 months.

This report reflects the June 2021 progress for unhoused services.

Analysis:

In June 2021, the HEAT Team continued to collaborate with City staff and County Office of Supportive Housing to conduct outreach throughout the City of Milpitas to engage and provide resources to the City's unhoused residents. The Team conducted engagement at previously-visited sites in order to continue to build trust and rapport among the unhoused clients and to support the clients in accessing resources. The HEAT Team also continued to evaluate need, monitor welfare, coordinate care, and maintain supportive contact with all active enrolled clients as needed.

During the month of June, the HEAT Team enrolled 10 clients and completed 11 assessments. Adding to 50 clients enrolled and 49 assessed since services began in March, this makes a total of 60 clients enrolled and 60 clients assessed. Since the HEAT Team has been conducting proactive outreach throughout Milpitas, they have been able to locate and connect with unhoused residents both at known and new locations. For the unhoused individuals that did not provide identifying information for the Team to enroll or assess, the Team provided basic needs items and community resources. See Attachment 2 for the HEAT Team June 2021 report.

The mobile shower and laundry program, after its launch on March 21, 2021, continued seeing high usage by the Milpitas community. During the month of June, WeHOPE provided four sessions to the unhoused community, providing a total of 56 showers and 36 loads of laundry, serving 23 individuals. See Attachment 3 for the WeHOPE Dignity on Wheels June 2021 report. At the September 7, 2021 Council meeting, Council provided direction to staff to continue the mobile shower and laundry program for an additional 12 months and asked staff to look into other location options for the dates surrounding the events on Main Street as part of the Main Street Revitalization efforts.

In addition to working closely with the above service providers, City departments continued to collaborate in providing assistance to the unhoused residents as well as addressing the health and safety of the community. As an example, approximately 70% of all referrals to the HEAT Team have been provided through the City's internal referral process. This process has reduced internal messaging and maximized the HEAT Team's ability to quickly respond to requests for assessments and to provide updates to City staff. For a summary of the various activities and services for Milpitas unhoused residents as described above, refer to Attachment 1 for the June 2021 report for unhoused services.

Fiscal Impact:

There is no fiscal impact to the City budget other than staff time related to this item.

California Environmental Quality Act:

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

Recommendation:

Receive June 2021 report for unhoused services.

Attachments:

1. June 2021 report for unhoused services
2. HEAT Team June 2021 report
3. WeHOPE Dignity on Wheels June 2021 report

JUNE 2021 REPORT FOR UNHOUSED SERVICES													
Outreach Location		Type	Jurisdiction	Unhoused Count	Date Counted	Date Referred	Clients Enrolled	Date Enrolled	Clients Assessed	Date Assessed	Clients Housed	Date Housed	Notes
1	Hillview Bridge	Encampment	Valley Water			2/26/2021							
2	Topaz Street 1	Encampment	City			N/A							
3	Serra Center	Encampment	Private Property			3/26/2021							
4	Ocean Supermarket	Encampment	Private Property			N/A							
5	Dixon Road 1	Encampment	City			3/25/2021							
6	Dixon Road 2	RV Vehicles	City			3/25/2021							
7	Calaveras Blvd Overpass	Encampment	City			3/19/2021	1	6/22/2021	1	6/22/2021			
8	Dempsey Road 1	Encampment	City			3/25/2021							
9	Sinclair Frontage Road	Encampment	Union Pacific Railroad			3/25/2021							
10	Yosemite Business Park	Encampment	Private Property			3/25/2021							
11	Gibraltar Court	Trailers	City			3/25/2021							
12	Topaz Street 2	Encampment	City			3/25/2021							
13	Railroad Court	Camp/Trailers	City			3/25/2021							
14	Abel Plaza	Encampment	Private Property			3/25/2021							
15	S. Main Street	Encampment	City			3/25/2021							
16	S. Abbott Avenue	Encampment	City (if on street) or County (if on County property)			3/25/2021							
17	W Calaveras Blvd	Encampment	City			3/25/2021							
18	Ethyl Court	Camp/Cars	City			3/25/2021							
19	Hammond Way	Cars/Trailers	City			3/25/2021							
20	Coyote Creek Trail 1	Encampment	Valley Water			3/25/2021	1	6/2/2021	2	6/2/2021, 6/9/2021			
21	Coyote Creek Trail 2	Encampment	Valley Water			3/25/2021	1	6/9/2021	1	6/9/2021			
22	Coyote Creek Trail 3	Encampment	Valley Water			3/25/2021							
23	Calaveras Plaza Shopping Center	Outreach (contact made in non-encampment setting)	N/A			N/A							
24	Dignity on Wheels Mobile Shower and Laundry	Outreach (contact made in non-encampment setting)	N/A	1	6/20/2021	N/A	1	6/20/2021	1	6/20/2021			
25	Dixon Landing Shopping Center	Outreach (contact made in non-encampment setting)	N/A			N/A							
26	Great Mall	Outreach (contact made in non-encampment setting)	N/A			N/A							
27	Milpitas Library	Encampment	City			N/A							
28	Main Street	Outreach (contact made in non-encampment setting)	N/A	2	6/22/2021	N/A	2	6/22/2021	2	6/22/2021			
29	Other (Street, Panhandle, Vehicle Dweller, or Unidentified Location)	Outreach (contact made in non-encampment setting)	N/A			N/A							
30	Dempsey Road 2	Encampment	Private Property			N/A							
31	Serra Center	Outreach (contact made in non-encampment setting)	N/A			N/A							
32	E. Calaveras Blvd	Outreach (contact made in non-encampment setting)	N/A	1	6/2/2021	N/A	1	6/2/2021	1	6/2/2021			
33	Dempsey Road 3	Outreach (contact made in non-encampment setting)	Private Property	2	6/29/2021	N/A	2	6/29/2021	2	6/29/2021			
34	Galaxy Court	Outreach (contact made in non-encampment setting)	City	1	6/25/2021	N/A	1	6/25/2021	1	6/25/2021			
			Total	7			10			11			

WeHOPE Dignity on Wheels Mobile Shower and Laundry	Session Location	Service Dates	Number of Sessions	Total Unduplicated Individuals Served	Showers Provided	Loads of Laundry Provided
	Milpitas Library	6/6/2021, 6/13/2021, 6/20/2021, 6/27/2021	4	23	56	36

Santa Clara County Office of Supportive Housing
 Abode Services
 Milpitas HEAT Team
 June 2021 Report

In June, Abode's HEAT outreach team continued to coordinate outreach services in the City of Milpitas, through as collaborative effort between the City of Milpitas, Milpitas Police Department, the Office of Supportive Housing (OSH), and community advocates. Throughout the month of June, the HEAT outreach team was deployed at various encampment sites throughout the city to locate, identify, and assess unhoused individuals to evaluate housing need, monitor welfare, and maintain supportive contact with all new enrollments as needed.

In June, Abode's HEAT team has enrolled 10 clients and completed 11 assessments. Also, the team made a total of 16 outreach contacts within June. In addition, the HEAT outreach team supported the Dignity on Wheels team by administering one Vi-SPDAT assessment, providing linkage to collateral services, as well as, providing other basic needs items (food, clothing, and transportation needs) to the unhoused individuals that enlisted in the scheduled Sunday event on 6/20/2021.

Throughout June, the team coordinated outreach efforts to engage various community concern encampments to assess and evaluate housing need. The team also worked diligently to connect those that were interested to shelter services and other collateral services. The team successfully linked participants with high mental health acuity to the OSH clinical team for mental health services and provided linkage to employment stability programs in order to support income acquisition for some participants. The following table reflects the number of outreach contacts, the total number of unhoused enrolled into the SCC HEAT program, as well as the number of VI-SPDAT assessments administered:

Milpitas HEAT Contact, Enrolled, Assessed Clients: June 2021

Outreach Location	Outreach Contact	Enrolled	Assessments
Milpitas Outreach (vehicle dweller)- E. Calaveras Blvd			
	1	1	1
6/2/21	1	1	1
Milpitas Encampment- Coyote Creek 16			
	2	1	2
6/2/21	1	1	1
6/9/21	1	0	1
Milpitas Encampment -Coyote Creek 17			
	1	1	1
6/9/21	1	1	1
Milpitas Outreach – Dempsey Rd.			
	4	2	2
6/29/21	4	2	2
Milpitas Outreach- Dignity on Wheels			
	1	1	1
6/20/21	1	1	1
Milpitas Outreach- Calaveras Plaza Shopping Center			
	2	0	0
6/28/21	1	0	0
6/10/21	1	0	0
Milpitas Outreach-Galaxy Ct.			
	1	1	1

6/25/21	1	1	1
Milpitas Encampment-S Park Victoria	1	0	0
6/25/21	1	0	0
Milpitas Encampment-Under 237 Overpass	1	1	1
6/22/21	1	1	1
Milpitas Outreach (Vehicle Dweller)- S Main St.	2	2	2
6/22/21	2	2	2
Grand Total	16	10	11

Milpitas Outreach= Contact made with client in non-encampment setting

Milpitas Encampment= Contact made at a location where a tent and/or other structures are used as shelter



Reporting Period		Total unduplicated individuals served during reporting period			Total unduplicated individuals served during contract term					Total Field Visits this month							
6/1/2021-6/30/2021		23			42					65							
								Age (for Field Visits)									
Session Locations		Service Date(s) Sundays Only	Hours	Unduplicated Individuals at Sessions	Showers Provided	Loads of Laundry Provided	>19	20-29	30-39	40-49	50-59	60-69	70-79	80+	Doesn't Know or Refused		
TOTALS FOR MONTH			16	23	56	36	2	0	13	22	16	12	0	0	0		
		6/6/2021															
		6/13/2021															
		6/20/2021															
		6/27/2021															
Gender (unduplicated)						Ethnicity (for Field Visits)							Race (for Field Visits)				
Male	Female	Trans Female (M to F)	Trans Male (F to M)	Gender Non- Conforming	Doesn't Know or Refused	White	Black of African American	Asian	American Indian or Alaskan Native	Native Hawaiian or Other Pacific Islander	Multiple Races	Doesn't Know or Refused	Non- Hispanic/Non- Latino	Hispanic/Latino	Doesn't Know or Refused		
34	8	0	0	0	0	10	4	8	8	0	3	32	9	5	51		



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize the City Manager to Execute the Master Funding Agreement with the Metropolitan Transportation Commission for the Priority Development Area Planning Grant Program and the Professional Services Agreement with Ascent Environmental for Consultant Services Related to Preparation of the Milpitas Gateway/Main Street Specific Plan Update in the Amount of \$930,708.00
Category:	Consent Calendar-Community Development
Meeting Date:	9/21/2021
Staff Contact:	Ned Thomas, Planning Director, 408-586-3273 Jay Lee, Principal Planner, 408-586-32
<u>Recommendation:</u>	Authorize the City Manager to execute the master funding agreement with the Metropolitan Transportation Commission for the Priority Development Area Planning Grant Program and the professional services agreement with Ascent Environmental for consultant services related to preparation of the Main Street/Gateway Specific Plan Update in the amount of \$930,708.00

Background:

The Milpitas Midtown Specific Plan was originally adopted by City Council in 2002 to maximize land use, transportation, and economic opportunities along the City's historic Main Street and to energize and catalyze mixed-use, transit-oriented development in the Midtown area, also known as the "heart" of Milpitas. Since adoption of the current Midtown Specific Plan, little of the community's vision for this area has been realized, and many potential development sites remain vacant and underutilized, especially along Main Street. Other commercial sites along the busy Calaveras Boulevard corridor are poised for new development or redevelopment to revitalize this important gateway to the City. Obstacles to redevelopment in the Midtown area include small and fragmented parcel sizes and ownership, depreciating assets, lack of a cohesive identity, gaps in the transportation network, and a perceived shortage of parking and public open space.

As part of the update process, the Midtown Specific Plan will be renamed the "Milpitas Gateway/Main Street Specific Plan" to reflect a greater focus on: 1) the historical significance of Main Street as a place for community members to gather and mingle; 2) the importance of Calaveras Blvd. as a primary gateway into central Milpitas, and; 3) the valuable 1-880 freeway frontage along Abbott Avenue with opportunities for new mixed-use commercial and office development. The Gateway/Main Street Specific Plan will provide a new vision and strategic policy framework to guide redevelopment and reinvestment in these three focus areas and transform this important gateway into an attractive and vibrant destination for the City and the region.

On April 6, 2021, the City Council adopted the FY2022-26 Capital Improvement Plan (CIP), which included the Milpitas Gateway/Main Street Plan (Midtown Specific Plan Update) as Project No. 3437 with an initial outlay of up to \$960,000 from the Community Planning Fund. As of today, the remaining project balance is \$828,000. On May 26, 2021, the Metropolitan Transportation Commission (MTC) awarded the City of Milpitas an additional \$500,000 through its Priority Development Area (PDA) Planning Grant Program. This program provides funding for specific plans that result in intensified land uses around public transit hubs and bus and rail corridors in the Bay Area. In awarding this funding to the City of Milpitas for the Midtown Specific Plan Update, the MTC noted that preference was given to proposals that would implement Plan Bay Area 2050 and support housing production at all income levels.

Analysis:

On March 16, 2021, the Purchasing Division released RFP No. 2515 seeking proposals from qualified vendors with demonstrated experience in municipal planning services to assist the City with the Milpitas Gateway/Main Street Specific Plan (Midtown Specific Plan Update).

The RFP was publicly noticed in accordance with the City's Municipal Code, advertised on the City's website, and emailed to companies registered with the City via ProcureNow.com, the City's eProcurement system. Additionally, the RFP was published on the City website. Upon release, 404 potential firms received the solicitation notification, and 46 firms downloaded the RFP documents.

The Purchasing Division received three (3) proposals by 2:00 pm on April 23, 2021, the published deadline to provide a response to the RFP. After an initial evaluation by five City staff members who comprised the evaluation committee, all three firms were invited to participate in a virtual interview via Zoom to gather information and ask clarifying questions regarding their proposals. Interviews were held on June 4, 2021 and scoring was finalized on June 16, 2021.

The three firms invited to participated in the interview process with the evaluation committee were:

1. Ascent Environmental
2. M-Group
3. Raimi + Associates

The evaluation committee reviewed proposals based on the following criteria:

1. Organization
2. Staff
3. Experience
4. Specific Management Approach
5. Professional Standing
6. Familiarity with Locality
7. Quality Control and Assurances
8. Proposed Compensation

The table below shows the final evaluation scores with the recommended firm highlighted in green:

Main Street/Gateway Specific Plan Update RFP No. 2420	Ascent Environmental	M-Group	Raimi + Associates
Final Evaluation Score	93	76.2	70.3

After compiling preliminary scoring, the top firm, Ascent Environmental, was invited to continue in the evaluation process by providing a detailed scope of work with the proposed compensation for all services outlined in the RFP. Staff's recommendation to the Council is based on the final proposal from Ascent Environmental.

Policy Alternatives:

Alternative 1: Do not authorize the City Manager to execute the master funding agreement with MTC and the professional services agreement with Ascent Environmental.

Pros: This action would avoid expending City staff time and resources to manage the Main Street / Gateway Specific Plan Update and consultant team.

Cons: In failing to update the Midtown Specific Plan, the City would forgo \$500,000 in approved PDA grant funds, which need to be expended within 36 months of execution of a funding agreement with MTC. Without the Milpitas Gateway/Main Street Specific Plan, the existing Midtown Specific Plan would remain in place. Absent new policies and standards to facilitate catalytic development, the Main Street area and Calaveras

Corridor would likely continue to suffer from disinvestment and a lack of identity. The City would potentially miss out on the opportunity to revitalize an important area of the city.

Reason not recommended: In light of the City's anticipated Regional Housing Needs Allocation (RHNA) from the Association of Bay Area Governments (ABAG), the Milpitas Gateway/Main Street Specific Plan is needed to help Midtown realize its full development potential and support regional and state efforts to address critical housing needs. If Midtown is unable to accommodate more housing development, it will be more challenging to meet the City's RHNA obligation. Moreover, the Milpitas Gateway/Main Street Specific Plan is needed to implement the vision of the recently adopted General Plan, which establishes Midtown as a key opportunity area for new economic growth and development in the City.

Fiscal Impact:

The cost to provide planning services for the Milpitas Gateway/Main Street Specific Plan will be covered by a combination of Community Planning Fees and the General Government CIP Fund in the amount of \$828,000, and funds received from MTC through the PDA Planning Grant Program in the amount of \$500,000. As noted above, the Milpitas Gateway Specific Plan is a budgeted CIP project (No. 3437).

California Environmental Quality Act:

Not applicable. The selection and contractual arrangement of planning services do not constitute a project, in accordance with Section 15378 of the CEQA Guidelines.

Recommendation:

Authorize the City Manager to execute the master funding agreement with the Metropolitan Transportation Commission for the Priority Development Area Planning Grant Program and the professional services agreement with Ascent Environmental for consultant services related to preparation of the Main Street/Gateway Specific Plan Update in the amount of \$930,708.00.

Attachments:

1. Master Funding Agreement with MTC
2. MTC Resolution No. 4202 (PDA Grant Awards)
3. Budget Change Form
4. Professional Services Agreement with Ascent Environmental

MASTER FUNDING AGREEMENT

BETWEEN THE METROPOLITAN TRANSPORTATION COMMISSION

AND

CITY OF MILPITAS

**PLANNING, PROGRAMMING,
TRANSPORTATION, TRANSIT, LAND USE OR OTHER PROJECTS**

FOR

FISCAL YEAR 2021-2022 through FISCAL YEAR 2031-2032

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MASTER FUNDING AGREEMENT
Between METROPOLITAN TRANSPORTATION COMMISSION
And CITY OF MILPITAS
For PLANNING, PROGRAMMING,
TRANSPORTATION, TRANSIT, LAND USE OR OTHER PROJECTS

This Master Funding Agreement, effective as of _____ (this “Master Funding Agreement” or “Agreement”), is entered into by and between the Metropolitan Transportation Commission (hereafter “MTC”), a regional transportation planning agency established pursuant to California Government Code § 66500 *et seq.*, and City of Milpitas (hereafter “AGENCY”). MTC and AGENCY are collectively referred to herein as “the Parties.”

WITNESSETH

WHEREAS, MTC has been designated as the Metropolitan Planning Organization (MPO - federal) and the Regional Transportation Planning Agency (“RTPA” - state) for the San Francisco Bay Region; and

WHEREAS, MTC from time to time expects to provide funds available to it as MPO, RTPA or otherwise to AGENCY; and

WHEREAS, it is expected that these funds will be used for planning, programming, transportation, transit, land use or other projects relevant to MTC or its statutory purposes (the “Project” or “Projects”); and

WHEREAS, the Parties wish to set forth the terms and conditions under which MTC may from time to time provide funding to AGENCY; and

WHEREAS, before MTC will make funds available hereunder, MTC and AGENCY will enter into at least one Supplement to this Master Funding Agreement, which must be in substantially the form attached hereto as Exhibit A (each, a “Supplement”) to establish the terms and conditions applicable to AGENCY when receiving funds for the Project;

NOW, THEREFORE, the Parties hereto agree as follows:

1.0 GENERAL

This Master Funding Agreement shall have no force and effect with respect to a Project or any portion thereof unless and until a Supplement has been fully executed by both MTC and AGENCY governing the relevant Project. Exhibit A, Form of Supplement, is attached hereto and incorporated herein. Each Supplement shall include the following information:

- a. A description of the applicable Project scope of work;
 - b. A maximum payment amount for the applicable Project scope of work;
 - c. An indication of whether the various clauses attached hereto as Exhibits B-1 through B-7 shall apply to AGENCY's implementation of the applicable Project scope of work;
 - d. Any additional covenants, conditions, restrictions or reporting requirements that apply to the applicable Project scope of work or funding source MTC is providing to AGENCY;
 - e. Identification of the MTC and AGENCY project managers for the applicable Project scope of work;
 - f. The estimated budget and payment milestones for the applicable Project scope of work;
- and
- g. Any MTC or AGENCY resolutions, authorizations or approvals, or any other key documents, relevant to the applicable Project scope of work or funding source MTC is providing to AGENCY.

Upon execution by MTC and AGENCY of such a Supplement, AGENCY shall assume the responsibility for implementing the applicable Project scope of work, and MTC will administer funding to AGENCY in accordance with this Agreement, the applicable Supplement, and any other documents incorporated by reference into such Supplement.

2.0 INTERAGENCY AGREEMENT ADMINISTRATION

The administration of this Agreement will be conducted by MTC staff. Day-to-day management of individual projects required under this Agreement is assigned to the appropriate Project Manager at AGENCY and Project Manager at MTC, as set forth in the applicable Supplement.

3.0 FUNDING

- A. The total compensation to be paid to AGENCY under this Agreement shall be the sum of the amounts of compensation payable to AGENCY as set forth in each Supplement.
- B. AGENCY and MTC jointly agree to exert their best efforts to manage each component of the Project in such a way that prevents costs from exceeding the estimated budget set forth in the applicable Supplement.
- C. Reimbursement of AGENCY travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration for similar employees (i.e. non-representative employees)

4.0 TERM

This Agreement is in effect for the ten years following the Effective Date. This Agreement term may be extended by mutual written agreement.

5.0 PAYMENT

Contingent upon AGENCY's completion of work products or milestones, as applicable, required under the applicable Supplement, AGENCY shall submit invoices to MTC for that portion of the funds available to AGENCY that have been expended. This invoice will be in the format and provided no more frequently than prescribed by MTC in the applicable Supplement. In addition, all supporting documentation must accompany expenditures included on AGENCY invoices. Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, which shall be subject to the review and reasonable approval of MTC's Project Manager or a designated representative. Approval of an invoice shall not be unreasonably withheld. AGENCY should submit invoices electronically via email to MTC at acctpay@bayareametro.gov or deliver or mail invoices to MTC, as follows:

Attention: Accounting Section
Metropolitan Transportation Commission
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA, 94105

6.0 DELAYS AND FAILURE TO PERFORM

Whenever AGENCY encounters any difficulty that will delay timely performance of work, AGENCY shall notify MTC in writing. The parties agree to cooperate to work out a mutually satisfactory course of action.

If MTC determines that AGENCY's failure to complete a product on a timely basis is due to causes solely within AGENCY's control, MTC may withhold commensurate payment due under this Agreement until compliance is achieved.

7.0 AMENDMENTS

This Agreement or any Supplement hereto may be amended by mutual agreement of MTC and AGENCY at any time during the term of the Agreement. All such changes shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the authorized Executive or a designated representative of MTC and AGENCY and specifically identified as amendments to the

Agreement. The MTC Project Manager is not a designated representative, for purposes of executing an amendment.

8.0 TERMINATION

Either party may terminate this Agreement, in whole or in part, at any time upon ninety (90) days' written notice. In this event, AGENCY shall submit a requisition to MTC for an amount representing the cost of services performed up to the effective date of termination for which AGENCY has not been previously reimbursed. In no event shall the maximum expenditure allowed under this Agreement, as it may be adjusted by a written amendment signed by both parties, be exceeded. Upon payment of the amount found due, MTC shall be under no further obligation to AGENCY, monetarily or otherwise.

9.0 USE OF THIRD PARTY CONTRACTS

AGENCY may subcontract or subvene funds to local agencies, consultants or contractors for performance of portions of the work required under this Agreement, without the prior written consent of MTC, provided AGENCY complies with any other applicable requirements of this Agreement and the applicable Supplement hereto, and applicable federal and state requirements.

10.0 INDEMNIFICATION

AGENCY shall indemnify, defend, and hold harmless MTC, its Commissioners, representatives, agents and employees from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), to the extent incurred by reason of any negligence or willful misconduct of AGENCY, its officers, employees or agents, or subconsultants or any of them in connection with this Agreement.

11.0 LAWS AND REGULATIONS

AGENCY shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state and/or a local government, and of any agency thereof, including but not limited to the California Department of Transportation (Caltrans) Local Assistance Procedures Manual, as they exist at the time of execution of the Agreement and as they may be amended in the future, which relate to or in any manner affect the performance of this Agreement and any Supplements.

12.0 RECORDS

AGENCY agrees to establish and maintain an accounting system conforming to generally accepted accounting principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. AGENCY further agrees to keep all records pertaining to the Project(s) being funded for audit purposes for a minimum of: (a) three (3) years following final payment to AGENCY, (b) four (4) years following the fiscal year of last expenditure under the Agreement; or (c) until completion of any litigation, claim or audit, whichever is longest.

13.0 AUDITS

AGENCY shall permit MTC and MTC's authorized representatives to have access to AGENCY's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 12. AGENCY shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time. Such permission shall extend to books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement of the AGENCY's contractors and subcontractors, if any. If applicable, should MTC request access to the construction site and related field operations, MTC shall provide reasonable notice to AGENCY, and AGENCY shall provide access as it deems reasonable and safe, subject to the rights of the property owner if such owner is not AGENCY.

AGENCY further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subconsultant agrees that MTC or any of MTC's duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subconsultant for the term specified above. "Subconsultant" is defined in Article 14.0 Subcontracts, below.

14.0 SUBCONTRACTS

A. For purposes of this Agreement, "subconsultant" shall mean any consultant or contractor under contract with the AGENCY to perform Project work. Any subconsultants must be engaged under written contract with AGENCY with provisions allowing AGENCY to comply with all requirements of this Agreement. Failure of a subconsultant to provide any insurance required under this Agreement shall be at the risk of AGENCY. MTC's Project Manager shall be notified in writing of any substitution or addition of subconsultants.

For any Project funded by the Federal Transit Authority (FTA), Federal Highway Administration (FHWA) or Caltrans, AGENCY shall complete Form 10-C, as may be revised by Caltrans from time to

time, within thirty (30) days of executing an agreement with a subconsultant and submit it to MTC's Project Manager. MTC shall not process payment of any invoice under the applicable Supplement relating to work by a subconsultant unless AGENCY shall have submitted to MTC a Form 10-C with respect to its contract with such subconsultant.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC and any subconsultants, and no subcontract shall relieve AGENCY of his/her responsibilities and obligations hereunder. AGENCY agrees to be as fully responsible to MTC for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by AGENCY. AGENCY's obligation to pay its subconsultants is an independent obligation from MTC's obligation to make payments to AGENCY.

C. Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement in excess of \$25,000 entered into under of this Agreement.

15.0 PROHIBITED INTERESTS

No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, et seq., direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, AGENCY further covenants that it has made a complete disclosure to MTC of all facts of which AGENCY is aware upon due inquiry bearing upon any possible interest, direct or indirect, that it believes any member, officer, agent or employee of MTC (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

16.0 ORGANIZATIONAL CONFLICTS OF INTEREST

AGENCY shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed by subconsultants or subcontractors under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC or AGENCY; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

AGENCY shall not engage the services of any subconsultant or subcontractor on any work related to this Agreement if the subconsultant or subcontractor, or any employee of the subconsultant or subcontractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement AGENCY becomes aware of an organizational conflict of interest in connection with the work performed by a subconsultant or subcontractor hereunder, AGENCY shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. AGENCY's written notice will also describe alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with performance of any work hereunder by a subconsultant or subcontractor, MTC shall similarly notify AGENCY. In the event a conflict is presented, whether disclosed by AGENCY or its subconsultant or subcontractor, or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with AGENCY to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject AGENCY or its subconsultant or subcontractor to damages incurred by MTC in addressing organizational conflicts that arise out of work performed by such subconsultant or subcontractor, or to termination of this Agreement for breach.

17.0 CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State.

18.0 PARTIAL INVALIDITY

If any term or condition of this Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

19.0 NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

20.0 ORDER OF PRECEDENCE

In the event of a conflict in the provisions of this Agreement, any Supplement hereto, or the Exhibits hereto incorporated by reference into such Supplement, the following order of priority shall be

used in resolving such conflict: the applicable Supplement shall have first priority, then the Exhibits incorporated into such Supplement, then this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

**METROPOLITAN TRANSPORTATION
COMMISSION**

CITY OF MILPITAS

Therese W. McMillan , Executive Director

Steven McHarris, City Manager

Document2

EXHIBIT A
FORM OF SUPPLEMENT

SUPPLEMENT [insert number] TO MASTER FUNDING AGREEMENT

This Supplement No. ____ to Master Funding Agreement (“Supplement or “Agreement”) is entered into this _____ day of _____, 20____, by and between the Metropolitan Transportation Commission (hereafter “MTC”) and [AGENCY] (hereafter “AGENCY”) and supplements the Master Funding Agreement, dated _____, 20____, by and between MTC and AGENCY.

Pursuant to this Supplement, MTC agrees to provide an amount not to exceed _____ dollars (\$_____) in [describe funding source] to AGENCY to fund the [brief description of Project] (as more fully described in Annex I hereto, the “Supplement Project”). The estimated budget and payment milestones for the Supplement Project scope of work is attached as Annex II hereto.

MTC will reimburse AGENCY for its eligible costs incurred for completed Supplement Project milestones or deliverables described in Annex II hereto.

The Supplement Project work will commence [date], and be completed no later than _____, 20____.

The clauses selected below and attached as exhibits to the Master Funding Agreement shall apply to AGENCY’s performance of the applicable Supplement Project scope of work hereunder:

- ☐ Exhibit B-1, Additional Terms and Conditions (General), Paragraph A
- ☐ Exhibit B-1, Additional Terms and Conditions (General), Paragraph B
- ☐ Exhibit B-2, Additional Terms and Conditions (Federally Required Clauses)
- ☐ Exhibit B-3, Additional Terms and Conditions (State Required Clauses)
- ☐ Exhibit B-4, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Non-Federally-Funded Agreements)
- ☐ Exhibit B-5, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Federally-Funded Agreements)
- ☐ Exhibit B-6, Additional Terms and Conditions (Regional Toll Funds including RM1, RM2, and AB1171)
- ☐ Exhibit B-7, Additional Terms and Conditions (Regional Discretionary Federal Funds including STP and CMAQ)

[Insert any additional covenants, conditions, restrictions or reporting requirements that apply to the Supplement Project scope of work or funding source MTC is providing to AGENCY.]

[Describe/attach any MTC or AGENCY resolutions, authorizations or approvals, or any other key documents, relevant to the applicable Project scope of work or funding source MTC is providing to AGENCY.]

The MTC Project Manager for the Supplement Project is [name, telephone, email]. The AGENCY Project Manager for the Supplement Project is [name, telephone, email].

This Supplement is supplemental to the Master Funding Agreement; all terms and conditions of the Master Funding Agreement, as may be amended, remain unchanged hereby.

Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Master Funding Agreement.

**METROPOLITAN TRANSPORTATION
COMMISSION**

CITY OF MILPITAS

Steve Heminger, Executive Director

Steven McHarris, City Manager

EXHIBIT B-1
ADDITIONAL TERMS AND CONDITIONS (GENERAL)

A. INSURANCE REQUIREMENTS

AGENCY shall, at its own expense, obtain and maintain (and/or cause its subconsultant(s) to obtain and maintain, as applicable) the types of insurance and financial security listed (if any) in the applicable attachment or exhibit to the relevant Supplement against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under such Supplement, and in effect at all times for the duration of such Supplement. All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better, or as otherwise specified in the applicable Supplement. Notwithstanding anything to the contrary, AGENCY may satisfy the insurance requirements herein utilizing self-insurance providing equivalent coverage.

B. CLAIMS OR DISPUTES

Unless otherwise directed in writing by MTC, AGENCY shall continue performance under this Agreement while any matters in dispute are being resolved. Further, MTC shall pay AGENCY for any undisputed work performed by AGENCY prior to or during the resolution of the matters in dispute. In the event there is a dispute concerning the interpretation of this Agreement or any aspect of the Project that the project managers identified by MTC and AGENCY are unable to resolve, the project manager for either MTC or AGENCY may request that an ad hoc Dispute Resolution Committee ("DRC") be convened to resolve the dispute. The DRC shall consist of two members, one appointed by the MTC Executive Director and the other appointed by the Chief Executive Officer of AGENCY. The responsibility of chairing each ad hoc DRC shall alternate between the agencies, beginning with MTC. Further, disputes between MTC and AGENCY that cannot be resolved by the DRC may be submitted to alternative dispute resolution, as agreed to by the parties. Fees and expenses of the mediator will be borne equally.

EXHIBIT B-2
ADDITIONAL TERMS AND CONDITIONS
(FEDERALLY REQUIRED CLAUSES)

1. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and, for FTA-funded projects, 49 U.S.C. § 5332 and any implementing requirements that FTA may issue. AGENCY agrees that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

2. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC's procurement and professional services activities.

AGENCY shall not discriminate on the basis of race, color, national origin or sex in the performance of the applicable Supplement. AGENCY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by AGENCY to carry out these requirements is a material breach of contract, which may result in the termination of the applicable Supplement or this Agreement, or such other remedy as MTC deems appropriate.

3. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

AGENCY agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21). For FTA-funded projects, AGENCY further agrees to comply with the current FTA Circular 4702.1A, "Nondiscrimination Guidelines for FTA Recipients," the U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, and the U.S. DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons.

4. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

AGENCY agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. § 5310(f); and their implementing regulations.

5. STATE ENERGY CONSERVATION PLAN

AGENCY shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321).

6. ALLOWABILITY OF COSTS

AGENCY shall comply with the cost principles (as applicable) in Office of Management and Budget (OMB) Circulars A-87, or A-122, or 48 Code of Federal Regulations Chapter 1 Part 31, or 49 Code of Federal Regulations Part 18, or in 2 Code of Federal Regulations Parts 200 and 1201, as applicable. In addition, all subcontracts must be in accordance with 2 Code of Federal Regulations Part 200, as applicable, MTC's funding agreement with DOT and any regulations, guidelines and circulars of DOT, applicable as a result of such funding agreement. Further, all subconsultants shall agree to comply with 48 Code of Federal Regulations, Chapter 1, Part 31.

7. LICENSE FOR FEDERAL GOVERNMENT PURPOSES

FTA/FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under the applicable Supplement; and (b) any rights of copyright to which MTC or AGENCY purchases ownership under the applicable Supplement.

8. IDENTIFICATION OF DOCUMENTS

All reports and other documents completed as part of the applicable Supplement shall carry the following notation on the front cover or title page:

"The preparation of this report has been financed in part by grants from the: **[select appropriate agency]** Federal Transit Administration/Federal Highway Administration, U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation."

9. AUDITS

AGENCY agrees to grant MTC, the U.S. DOT, FTA or FHWA, as applicable, the Comptroller General of the United States, the State of California, and their authorized representatives access to AGENCY's books, records, accounts, and any and all work products, materials, and other data relevant to the applicable Supplement, for the purpose of making an audit, examination, excerpt and transcription during the term of the applicable Supplement and for the period specified in Article 14. AGENCY shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials

and data for that period of time. If, as a result of any audit, it is determined by the auditor that reimbursement of any costs including profit or fee under the applicable Supplement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, AGENCY agrees to reimburse MTC for those costs within sixty (60) days of written notification by MTC.

AGENCY further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subrecipient agrees that MTC the U.S. DOT, FTA or FHWA, as applicable, the Comptroller General of the United States, the State of California, and their authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subrecipient for the term specified above.

10. FLY AMERICA REQUIREMENTS.

AGENCY agrees to comply with 49 U.S.C. 40118 (the “Fly America Act”) in accordance with the General Services Administration's regulations at 41 CFR Part 301 - 10, which provide that recipients and subrecipients of Federal funds and their consultants are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. AGENCY shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements, if used. AGENCY agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

11. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.

A. AGENCY acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, AGENCY certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Supplement or the FTA assisted project for which work is being performed under the applicable Supplement. In addition to other penalties that may be applicable, AGENCY further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on AGENCY to the extent the Federal Government deems appropriate.

B. AGENCY also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on AGENCY, to the extent the Federal Government deems appropriate.

C. AGENCY agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

12. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

MTC and AGENCY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the applicable Supplement or this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to MTC, AGENCY or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement.

13. DEBARMENT

This Article is only applicable if the applicable Supplement exceeds \$25,000. AGENCY certifies that neither it, nor any of its participants, principals or subrecipients is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 2 CFR Parts 180 and 1200, by any Federal agency or department.

14. CLEAN AIR AND WATER POLLUTION ACTS

This Article is only applicable if the applicable Supplement exceeds \$100,000. AGENCY agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

15. LOBBYING

This Article is only applicable if the applicable Supplement exceeds \$100,000. AGENCY agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.

Attachments:

Attachment A – Federally Required Certifications (AGENCY shall either provide these certifications to MTC or shall provide copies of such certifications AGENCY has independently made to the Federal Government.)

EXHIBIT B-2

ATTACHMENT A

FEDERALLY REQUIRED CERTIFICATIONS

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

Instructions for Certification:

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MTC may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to MTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact MTC for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MTC.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, MTC may pursue available remedies including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION**

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its “principals” [as defined at 49 C.F.R. Section 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date

(signature of authorized official)

(type/print name and title)

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____ hereby certify on behalf of _____ that:
(name and title of grantee official) (name of grantee)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20__

By:

(signature of authorized official)

(title of authorized official)

EXHIBIT B-3
ADDITIONAL TERMS AND CONDITIONS
(STATE-REQUIRED CLAUSES)

- 1) Attachment A – Fair Employment Practices Addendum
- 2) Attachment B – Nondiscrimination Assurances
 - a.** Appendix A – Clauses to be inserted in every agreement subject to the ACT, as defined in Attachment B of this Exhibit and REGULATIONS, also as defined in Attachment B.
 - b.** Appendix B – To be included as covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein
 - c.** Appendix C – To be included for subsequent transfer of real property acquired or improved under federal-aid Program
 - d.** Appendix D – To be included for the construction or use of or access to space on, over, or under real property acquired or improved under the federal-aid Program
- 3) Attachment C – State Department of Transportation Requirements

EXHIBIT B-3

ATTACHMENT A

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of the applicable Supplement, AGENCY shall not discriminate against any employee for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g. cancer), age (over 40), marital status, and denial of family care leave. AGENCY shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into the applicable Supplement by reference and made a part hereof as if set forth in full. Each of the AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements as appropriate.

3. AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under the applicable Supplement.

4. AGENCY shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of the applicable Supplement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate the applicable Supplement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure AGENCY's breach of the applicable Supplement.

EXHIBIT B-3

ATTACHMENT B

NONDISCRIMINATION ASSURANCES

AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964” (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which AGENCY receives federal financial assistance from the Federal Department of Transportation. AGENCY HEREBY GIVES ASSURANCE THAT AGENCY shall promptly take any measures necessary to effectuate the applicable Supplement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That AGENCY agrees that each “program” and each “facility” as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a “program”) conducted, or will be (with regard to a “facility”) operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.
2. That AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements: AGENCY hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.
3. That AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.
4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which AGENCY retains ownership or possession of the property.

9. That AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of STATE assisted contracts. The California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies is incorporated by reference in the applicable Supplement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the applicable Supplement. Upon notification to the recipient of its failure to carry out the Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and

may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO ATTACHMENT B

(Clauses to be inserted in every agreement subject to ACT and REGULATIONS)

During the performance of the applicable Supplement, AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as AGENCY) agrees as follows:

(1) **Compliance with Regulations:** AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of the applicable Supplement.

(2) **Nondiscrimination:** AGENCY, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) **Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by AGENCY of the AGENCY's obligations under the applicable Supplement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts AGENCY has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of AGENCY's noncompliance with the nondiscrimination provisions of the applicable Supplement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B TO ATTACHMENT B

To be included as covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein)

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that AGENCY shall accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on AGENCY, its successors and assigns.

AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

(2) that AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX C TO ATTACHMENT B

(To be included for subsequent transfer of real property acquired or improved under federal-aid Program)

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by AGENCY, pursuant to the provisions of Assurance 7(a) of Attachment I-2.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add 'as covenant running with the land') that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, AGENCY shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of AGENCY and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX D TO ATTACHMENT B

(To be included for the construction or use of or access to space on, over, or under real property acquired or improved under the federal-aid Program)

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by AGENCY, pursuant to the provisions of Assurance 7 (b) of Attachment I-2.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add “as a covenant running with the land”) that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, AGENCY shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of AGENCY, and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

EXHIBIT B-3

ATTACHMENT C

STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS

Caltrans Non – Discrimination

A. In the performance of work undertaken pursuant to the applicable Supplement, AGENCY shall not, and shall affirmatively require that its contractors shall not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.

B. AGENCY shall ensure, and shall require that its contractors and all subcontractors and/or subrecipients shall ensure, that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. AGENCY shall comply, and ensure that its contractors and subcontractors and/or subrecipients shall comply, with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (af), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into the applicable Supplement by reference and made a part hereof as if set forth in full.

C. Each of AGENCY's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. AGENCY shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under the applicable Supplement.

D. AGENCY shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 are made applicable to the applicable Supplement by this reference. Wherever the term "Contractor" appears therein, it shall mean AGENCY.

E. AGENCY shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with these non-discrimination provisions.

EXHIBIT B-4
ADDITIONAL TERMS AND CONDITIONS
(PREVAILING WAGE RATES, APPRENTICESHIPS, AND PAYROLL RECORDS
NON FEDERALLY FUNDED AGREEMENTS)

AGENCY's contractor(s) and all subcontractors shall comply with applicable sections of the California Labor Code and regulations promulgated thereunder (including without limitation, Sections 1720 *et seq.* and Title 8 of the California Code of Regulations Sections 16000 *et seq.*) governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations, in regards to work performed and/or funded under this Agreement. In particular, AGENCY's attention is drawn to Labor Code Sections 1771 (payment of prevailing wage rate), 1775 (penalty for non-payment), 1776 (payroll records), and 1777.5 (use of apprentices). AGENCY's contractor(s) and all subcontractors, to the extent the work of such contractor(s) and subcontractors under this Agreement are subject to California Labor Code Section 1720 *et seq.*, shall be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 and shall furnish electronic certified payroll records directly to the Labor Commissioner through the internet portal of the Division of Labor Standards Enforcement. Per Master Funding Agreement Article 12.0, Records and 13.0 Audits, MTC reserves the right to request copies of the certified payroll records.

EXHIBIT B-5
ADDITIONAL TERMS AND CONDITIONS
(PREVAILING WAGE RATES, APPRENTICESHIPS, AND PAYROLL RECORDS
FEDERALLY FUNDED AGREEMENTS)

The Additional Federal Clauses Applicable to Public Works included in Attachment A, attached hereto and incorporated herein by this reference, and the Davis-Bacon prevailing wages apply to work performed and/or funded under the applicable Supplement. AGENCY agrees that AGENCY will require its contractor(s) and all subcontractors will pay the higher of (i) the applicable wage set forth in Federal Wage Determinations, and (ii) the applicable California prevailing rate. Certified payroll records in the form set forth in the Public Works Payroll Reporting Form, as found at <https://www.dol.gov/whd/forms/wh347.pdf>, shall be prepared or collected from its contractor(s) and all subconsultant(s) on a weekly basis by the AGENCY. Per Master Funding Agreement Article 12.0, Records and 13.0 Audits, MTC reserves the right to request copies of the certified payroll records. MTC may withhold payment if the certified payrolls to be submitted by AGENCY pursuant to this Exhibit B-5, Prevailing Wage Rates, Apprenticeships, and Payroll Records, are not current.

EXHIBIT B-5

ATTACHMENT A

ADDITIONAL FEDERAL CLAUSES APPLICABLE TO PUBLIC WORKS

1. Buy America
2. Davis-Bacon Act
3. Contract Work Hours and Safety Standards Act
4. Copeland Anti-Kickback Act
5. Prompt Payment of Funds Withheld to Subcontractors

1. Buy America Requirements

Buy America – Attention is directed to the “Buy America” requirements of the surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the “Buy America” requirements. A Certificate of Compliance shall be furnished for steel and iron materials. The certificates shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the above exceptions.

The requirements imposed on AGENCY by the law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of the materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. The AGENCY or its contractor(s) shall furnish the Engineer acceptable documentation of the quantity and value of the foreign steel and iron prior to incorporation the materials into the work.

Certification requirement for procurement of steel, iron, or manufactured products.

The AGENCY hereby certifies that all manufacturing process for steel and iron materials occurred in the United States, except for the above exceptions.

Signature: _____
Name and Title: _____
Company Name: _____
Date: _____

2. DAVIS-BACON ACT

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contract Work Hours and Safety Standards Act - (i) The AGENCY’s contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the AGENCY’s contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** - The AGENCY’s contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

4. COPELAND ANTI-KICKBACK ACT

Compliance with Copeland Act requirements - The AGENCY’s contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

5. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

The AGENCY shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The AGENCY's prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating AGENCY's prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

EXHIBIT B-6
ADDITIONAL TERMS AND CONDITIONS
(REGIONAL TOLL FUNDS INCLUDING RM1, RM2, AND AB 1171)

Recitals

WHEREAS, Streets and Highways Code (SHC) Sections 30950 *et seq.* created the Bay Area Toll Authority (“BATA”) which is a public instrumentality governed by the same board as that governing MTC; and

WHEREAS, pursuant to SHC Section 31010(b), funds generated in excess of those needed to meet the toll commitments as specified by paragraph (4) of subdivision (b) of Section 188.5 of the SHC shall be available to BATA for funding projects consistent with SHC Sections 30913 and 30914; and

WHEREAS, MTC adopted Resolution No. 3434, Revised, which establishes commitments of bridge toll funds, including such AB 1171 funds, to specific projects and corridors; and

WHEREAS, on November 8, 1988, voters approved Regional Measure 1 (“RM1”), which authorized a standard auto toll of \$1 on the seven state-owned toll bridges in the San Francisco Bay Area to fund various transportation projects within the region; and

WHEREAS, on March 2, 2004, voters approved Regional Measure 2 (“RM2”), increasing the toll for all vehicles on the seven state-owned toll bridges in the San Francisco Bay Area by \$1.00 to fund various transportation projects within the region that have been determined to reduce congestion or to improve travel in the toll bridge corridors; and

WHEREAS, RM2 established the Regional Traffic Relief Plan and listed specific capital projects and programs and transit operating assistance as eligible to receive RM2 funding as identified in SHC Section 30914(c) and (d). The funding amounts assigned to certain of the programs and projects were subsequently revised by MTC Resolution No. 3801; and

WHEREAS, to the extent the Project is receiving RM2 funding hereunder, SHC Section 30914(c) lists the Project to which this Exhibit B-6 and the applicable Supplement apply as one such eligible transportation project and designates AGENCY as project sponsor; and

WHEREAS, pursuant to MTC Resolution No. 3636, MTC established procedures whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 Bridge Toll funding. A copy of MTC Resolution No. 3636 is attached hereto and incorporated herein as Attachment D, MTC Resolution No. 3636; and

WHEREAS, AGENCY submitted one or more allocation requests for RM2, AB 1171, and/or RM1 funding for the Project to which this Exhibit B-6 applies. A copy of the applicable allocation request(s) as well as AGENCY’s resolution(s) approving the allocation request(s) are attached to the applicable Supplement and incorporated herein as Attachment A, Updated Initial Project Report, and Attachment B, AGENCY Resolution(s), respectively; and

WHEREAS, by the resolution(s) attached to the applicable Supplement and incorporated herein as Attachment A as Attachment C, MTC Resolution(s) Approving Project Request, MTC approved AGENCY's request(s) for the applicable funds for the applicable Project.

I. AGENCY AGREES

A. AGENCY agrees to perform or caused to be performed the activities described in Attachment A, Updated Initial Project Report. AGENCY will provide all necessary staffing and support resources to complete the Project as described in Attachment A, AGENCY agrees to meet all conditions listed in Attachment C, MTC Resolution(s) Approving Project Request.

B. AGENCY shall provide MTC with annual progress reports on or before each July 31 throughout the term of this Agreement in accordance with the monitoring and reporting requirements specified in MTC Resolution No. 3636.

C. AGENCY shall submit invoices to MTC no less than annually, but may submit invoices as frequently as monthly. In either case, AGENCY shall submit an invoice to MTC within thirty (30) days after the end of each period for which payment is sought covering costs for the Project activities accomplished through the end of such period, not covered by previously submitted invoices. Each invoice shall be supported by the following information: (i.) A brief narrative progress report of the activities accomplished during the invoice period, including the percentage of the contract complete and the percentage of funding expended; (ii.) the costs requested for reimbursement with RM1, RM2 and/or AB 1171 funds, as applicable; (iii.) the total costs expended for the invoice period broken down by type and source of funding; (iv.) the total RM1, RM2 and/or AB 1171 funds, as applicable received as reimbursement to date; (v.) the total costs expended for project name to date broken down by type and source of funding; and (vi.) any additional supporting data in a form and detail required by MTC.

D. AGENCY agrees to spend RM1, RM2 and/or AB 1171 funds, as applicable, at a rate not exceeding the schedule attached to the applicable Supplement and incorporated herein as Attachment E, Reimbursement Schedule.

E. AGENCY shall comply with and shall assure that any AGENCY contractor performing Project work with RM1, RM2 and/or AB 1171 funds, as applicable, received under this Agreement complies with MTC Resolution No. 3636, Revised, as well as the provisions of MTC's RM2 Policy Guidance contained in Attachment D, MTC Resolution No. 3636, relative to constructing, operating, and maintaining the Project. MTC may update Resolution No. 3636 from time to time. The AGENCY agrees to comply with the most current Resolution that is approved at any given time.

F. AGENCY is responsible for completing the Project within cost, scope and schedule as described in Attachment A, Updated Initial Project Report, as it may be updated from time to time. Any updates must be approved by AGENCY and MTC in writing before being incorporated into this Agreement.

G. AGENCY certifies that:

- The Project is consistent with the Regional Transportation Plan ("RTP").

- All environmental permits or clearances necessary for the Project have been or will be obtained, and the year of Project funding for the construction phase of the Project has taken into consideration the time necessary to obtain permitting approval for the Project as an operable and useable segment.
- The Project or portion thereof to be funded under this Agreement will be fully funded upon the execution of the applicable Supplement.
- AGENCY has reviewed the Project needs and has adequate internal staffing and support resources to deliver and complete the Project within the cost, scope, and schedule set forth in the Initial Project Report, as updated, attached to the applicable Supplement as Attachment A.
- If applicable to the Project, AGENCY is an eligible sponsor of projects in MTC Resolution No. 3434, Revised.
- If applicable, AGENCY is authorized to submit an application for RM2 funds for the Project in accordance with SHC Section 30914(c).
- If applicable, AGENCY is authorized to submit an application for AB 1171 funds for the Project in accordance with SHC Section 31010(b).
- The Project is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Sections 15000 *et seq.*), and if relevant, the National Environmental Policy Act (NEPA) (42 USC 4321 *et seq.*) and the applicable regulations thereunder.
- There is no legal impediment to AGENCY making allocation requests for RM1, RM2 and/or AB 1171 funds, as applicable.
- There is no pending or threatened litigation which might in any way adversely affect the Project or the ability of AGENCY to deliver such Project.

H. In addition to AGENCY's commitment under Article 10, INDEMNIFICATION, of the Master Funding Agreement, AGENCY agrees at its own cost, expense, and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, its Commissioners, representatives, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM1, RM2 and/or AB 1171 funds, as applicable, as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

I. If any revenues or profits from any non-governmental use of the Project are collected by AGENCY, those revenues or profits shall be used exclusively for the public transportation services for which the Project was initially approved, either for capital improvements or maintenance and operational costs, otherwise MTC is entitled to a proportionate share equal to MTC's percentage participation in the Project. MTC's percentage participation shall equal the amount of funds allocated to Project, divided by the total Project budget as shown in Attachment E, Reimbursement Schedule, as updated from time to time, as such amount may be adjusted to reflect total project costs.

J. Project assets purchased by AGENCY with RM1, RM2 and/or AB 1171 funds, as applicable, including facilities and equipment, shall be used for the intended public transportation uses and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for their useful life, MTC shall be entitled to a present day value refund or credit (at MTC's

option) based on MTC's share of the fair market value of the facilities and equipment at the time the public transportation uses ceased, which sum shall be paid back to MTC in the same proportion that RM1, RM2 and/or AB 1171 funds, as applicable, were originally used.

K. AGENCY shall post on both ends of the Project construction site(s), unless prohibited by the site owner if such owner is not the AGENCY, at least two signs visible to the public stating that the Project is funded with RM1, RM2 and/or AB 1171 funds, as applicable.

L. AGENCY's City Manager, General Manager, Executive Director, Chief Executive Officer, or equivalent officer, or designee, is delegated the authority to make non-substantive changes or minor amendments to the initial project report as he/she deems appropriate; otherwise, Article 7, AMENDMENTS, of this Agreement applies.

M. AGENCY agrees to comply with the provisions of MTC Resolution No. 3636, Revised, and the MTC Resolutions set forth in Attachment C, MTC Resolution(s) Approving Project Request.

II. MTC AGREES

A. MTC agrees to provide AGENCY with RM1, RM2 and/or AB 1171 funds, as applicable, within the allocation amounts in Attachment C, MTC Resolution(s) Approving Project Request and as restated in the relevant Supplement for the purpose of funding the Project as described in Attachment A.

The entire funding amount is available for reimbursement based on the schedule included in Attachment E, Reimbursement Schedule, to the applicable Supplement. In addition, if applicable, MTC agrees to support AGENCY's allocation request from the State according to the Allocation Request Schedule provided in Attachment F to the applicable Supplement.

In the event AGENCY does not use all RM1, RM2 and/or AB 1171 funds, as applicable, made available in a given fiscal year, those unused amounts will be available for reimbursement in subsequent year(s) for the duration of this Agreement.

III. IT IS MUTUALLY AGREED

A. MTC may terminate the applicable Supplement, in its sole discretion, for any force majeure event, including but not limited to any earthquake, flood or other natural disaster, any epidemic, blockade, rebellion, war, act of sabotage or civil commotion, fire, explosion or strike, or prolonged economic conditions affecting the ability of the Bay Area Toll Authority to make payments to bond holders who shall in all circumstances have priority to payment of funds, if such event (i) irrecoverably disrupts or renders impossible AGENCY's performance hereunder; or (ii) disrupts MTC's ability to make payments hereunder. If MTC so terminates the applicable Supplement, AGENCY will be entitled to payment for non-recoverable Project costs incurred prior to the date of such termination, including but not limited to any amounts AGENCY owes to the owner of the Project construction sites, if such owner is not AGENCY, up to the maximum amount payable under this Agreement.

B. If AGENCY fails to perform as specified in this Agreement and the applicable Supplement, MTC may terminate the applicable Supplement or this Agreement for cause. Termination shall be effected by

serving a sixty (60) day advance written notice of termination on AGENCY, setting forth the manner in which AGENCY is in default. If AGENCY does not cure the breach or describe to MTC's satisfaction a plan for curing the breach within the sixty (60) day period, MTC may terminate this Agreement or the applicable Supplement for cause. In the event of such termination for cause, AGENCY will be entitled only to those costs incurred for already completed Project work, not to exceed the maximum amount payable under this Agreement for such Project work, however, in no event shall MTC be required to reimburse AGENCY for any costs incurred for work causing or contributing to the default.

C. If the Project is cancelled, suspended indefinitely, or otherwise not completed for any reason, AGENCY shall repay MTC any RM1, RM2 and/or AB 1171 funds, as applicable, expended that exceed MTC's proportionate share of eligible costs for the Project.

D. Upon completion of the Project, AGENCY will properly account for all Project costs incurred.

E. The applicable Supplement shall terminate upon closeout of the PROJECT in accordance with Policies and Procedures in MTC Resolution No. 3636, Revised, or on the termination date, if any, set forth in the Supplement, whichever is sooner.

F. The terms and conditions of this Agreement include the following and each is incorporated by reference herein as if fully set forth herein.

Attachment A – Updated Initial Project Report (Allocation Request)

Attachment B – AGENCY Resolution(s) (and opinion of counsel, if applicable)

Attachment C – MTC Resolution(s) Approving Project Request(s)

Attachment D – MTC Resolution No. 3636, Revised

Attachment E – Reimbursement Schedule

Attachment F – Allocation Request Schedule

EXHIBIT B-7
ADDITIONAL TERMS AND CONDITIONS
(REGIONAL DISCRETIONARY FEDERAL FUNDS INCLUDING STP AND CMAQ)

1. TERMINATION

Notwithstanding Article 8.0, TERMINATION in the Master Funding Agreement, MTC may terminate this Agreement without cause upon ten (10) days prior written notice. If MTC terminates this Agreement without cause, AGENCY shall be entitled to payment for costs incurred for incomplete deliverables, up to the maximum amount payable for each deliverable. If AGENCY fails to perform as specified in this Agreement, MTC may terminate this Agreement for cause by written notice and AGENCY shall be entitled only to costs incurred for work product acceptable to MTC, not to exceed the maximum amount payable under this Agreement for such work product.

2. RETENTION OF RECORDS

AGENCY agrees to establish and maintain an accounting system confirming to GAAP that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs.

AGENCY further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of three (3) years following final payment to AGENCY or four (4) years following the fiscal year of the last expenditure under this Agreement, whichever is longer, in accordance with generally accepted accounting principles. Copies of AGENCY audits, if any, performed during the course of Project development and at Project completion shall be forwarded to MTC no later than one hundred eighty (180) days after fiscal year end close.

3. AUDITS

Notwithstanding Article 13.0, AUDITS in the Master Funding Agreement, AGENCY agrees to grant MTC, or any agency that provides MTC with funds for the Project, including but not limited to, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, and their authorized representatives access to AGENCY's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of this Agreement. All documents shall be available for inspection during normal business hours at any time while the Project is underway and for the retention period specified in Article 4.

AGENCY further agrees to include in all its third-party contracts hereunder a provision to the effect that the contractor agrees that MTC, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, during normal business hours, for the term specified above. The term "contract" as used in this clause excludes agreements not exceeding \$25,000.

4. LICENSE TO WORK PRODUCTS

AGENCY hereby grants to MTC an irrevocable, non-exclusive, royalty-free license to use without restriction and share with any person or entity all drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture, and any other documents, materials, data, and products ("Work Products") developed, prepared, or assembled by AGENCY or AGENCY's consultant(s) or its subconsultants pursuant to this Agreement. MTC may exercise their licenses to Work Products through sublicenses to a

third party, without the approval of AGENCY or AGENCY's consultant(s) or subconsultants. FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which AGENCY or AGENCY's consultant(s) or subconsultants purchase ownership under this Agreement.

5. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332 for FTA-funded projects, AGENCY agrees that it shall not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

6. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC's procurement and professional services activities.

AGENCY shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. AGENCY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by AGENCY to carry out these requirements is a material breach of contract, which may result in the termination of this agreement or such other remedy as MTC deems appropriate.

7. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

AGENCY agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21).

8. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

AGENCY agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. § 5310(f); and their implementing regulations.

9. STATE ENERGY CONSERVATION PLAN

AGENCY shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321).

10. DEBARMENT

AGENCY certifies that neither it, nor any of its participants, principals or subcontractors is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 49 CFR Part 29, by any Federal agency or department.

11. CLEAN AIR AND WATER POLLUTION ACTS

AGENCY agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

12. LOBBYING

AGENCY agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.

13. INDEMNIFICATION

Notwithstanding Article 10.0, INDEMNIFICATION, in the Master Funding Agreement AGENCY shall indemnify and hold harmless MTC, Caltrans, their Commissioners, Directors, officers, agents and employees from any and all claims, demands, suits, loss, damages, injury and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of AGENCY, its officers, directors, employees, agents and contractors, or any of them, under or in connection with this Agreement; and AGENCY agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, Caltrans, their Commissioners, Directors, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

14. COMPLIANCE WITH LAWS

AGENCY shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state, or local government, and any agency thereof, including, but not limited to MTC, the U.S. DOT, FHWA, the State, and Caltrans, which relate to or in any manner affect the performance of this Agreement. Those laws, statutes, ordinances, rules, regulations, and procedural requirements that are imposed on MTC as an AGENCY of federal or state funds are hereby in turn imposed on AGENCY (including, but not limited to, 49 CFR Part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”), and are herein incorporated by this reference and made a part hereof.

AGENCY contractors shall agree to comply with all 48 CFR, Chapter 1, Part 31, Contract Cost Principles and Procedures. In addition, AGENCY certifies that the AGENCY and its contractors shall comply with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code Section 21,000 *et seq.* and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 *et seq.*) and the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321 *et seq.* and the applicable regulations thereunder.

15. IDENTIFICATION OF DOCUMENTS

AGENCY shall ensure that all reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:

“The preparation of this report has been financed in part by grants from the U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation.”

Date: November 18, 2015
 W.I.: 1512
 Referred by: PAC
 Revised: 07/27/16-C 10/26/16-C 12/21/16-C
 03/22/17-C 04/26/17-C 05/24/17-C
 06/28/17-C 07/26/17-C 09/27/17-C
 10/25/17-C 11/15/17-C 12/20/17-C
 01/24/18-C 02/28/18-C 03/28/18-C
 04/25/18-C 05/23/18-C 06/27/18-C
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 12/19/18-C 01/23/19-C 02/27/19-C
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 02/26/20-C 05/27/20-C 07/22/20-C
 09/23/20-C 11/20/20-C 01/27/21-C
 02/24/21-C 04/28/21-C 05/26/21-C

ABSTRACT

Resolution No. 4202, Revised

Adoption of the project selection policies and project programming for the second round of the One Bay Area Grant program (OBAG 2). The project selection criteria and programming policy contain the project categories that are to be funded with various fund sources including federal surface transportation act funding available to MTC for its programming discretion to be included in the federal Transportation Improvement Program (TIP) for the OBAG 2 funding period.

The resolution includes the following attachments:

- Attachment A – OBAG 2 Project Selection Criteria and Programming Policy
- Attachment B-1 – OBAG 2 Regional Program Project List
- Attachment B-2 – OBAG 2 County Program Project List

On July 27, 2016, Attachment A, and Attachments B-1 and B-2 were revised to add additional funding and projects to the OBAG 2 framework, including \$72 million in additional Fixing America’s Surface Transportation Act (FAST) funding, and to incorporate housing-related policies.

On October 26, 2016, Attachment A, and Attachment B-1 were revised to clarify language related to the North Bay Priority Conservation Area (PCA) Program in Attachment A and to deprogram \$2,500,000 from the Water Emergency Transportation Authority (WETA) Ferry Service Enhancement Pilot within the Regional Active Operational Management Program.

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MTC Resolution No. 4202, Revised

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On December 21, 2016, Attachments B-1 and B-2 were revised to redirect \$417,000 in un-programmed balances from the Regional Active Operational Management program to MTC's Spare the Air Youth within the Climate Initiatives Program; divide MTC's Rideshare Program into three subcomponents totaling \$10,000,000: \$720,000 for Rideshare Implementation, \$7,280,000 for the Carpool Program, and \$2,000,000 for the Vanpool Program; direct \$1,785,000 from 511 Next Gen to the Commuter Benefits program; direct \$1,000,000 in un-programmed balances to SMART's Multi-Use Pathway; transfer \$1,000,000 from MTC's Casual Carpool project to MTC's Eastbay Commuter Parking project within the Bay Bridge Forward program, as the former will be funded with non-federal funds; transfer \$500,000 from the Freeway Performance Initiative program and \$500,000 in un-programmed balances to US 101/Marin Sonoma Narrow's B2 Phase 2 project in the Regional Active Operational Management Program; shift \$40,000,000 from the BART Car Replacement/Expansion project to the Golden Gate Bridge Suicide Deterrent project and \$13 million from MTC's Clipper project to un-programmed balances within the Transit Priorities program as part of a RM2 funding action to address a cost increase on the Golden Gate Bridge Suicide Deterrent project; and program \$5,990,000 to Alameda County's Safe Routes to School Program in the County Program.

On March 22, 2017, Attachment B-1 was revised to program \$17,000,000 in un-programmed balances within the Regional Transit Priorities Program to MTC's Clipper Program, as part of the FY17 Transit Capital Priorities program.

On April 26, 2017, Attachment B-2 was revised to program \$1,655,000 to the Sonoma Safe Routes to School program; and redirect \$1,000 from Contra Costa Transportation Authority's Planning Activities Base to its discretionary balance and \$1,000 from San Francisco County Transportation Authority's Planning Activities Base to its discretionary balance to address an inconsistency between amounts programmed to planning activities in Appendix A-3 and reflect actual amounts obligated for planning.

On May 24, 2017, Attachment B-1 was revised to redirect \$1,237,000 from 511 Next Gen to AOM Implementation within the Regional Active Operational Management program to reflect re-organization of staff between program elements; direct \$18,000,000 in Arterial/Transit Performance to the Program for Arterial System Synchronization (\$5,000,000) and the Next Gen Arterial Operations Program (\$13,000,000) within the Regional Active Operational Management program; direct \$19,000,000 from the Transportation Management System (TMS) Field Equipment Devices Operations and Maintenance to TMS Implementation (\$2,910,000), Performance-Based Intelligent

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Transportation Systems Device Maintenance and Rehabilitation (\$5,940,000), Transportation Management Center Asset Upgrade and Replacement (\$4,000,000), I-880 Communication Upgrade and Infrastructure Gap Closures (\$4,000,000) and a Detection Technology Pilot (\$5,000,000) within the Regional Active Operational Management program; and remove \$290,556 in un-programmed balances from the Regional Active Operational Management program to address over-programming in a previous cycles of the STP/CMAQ regional programs.

On June 28, 2017, Attachments B-1 and B-2 were revised to reprogram \$1,000,000 from the SMART Pathway – 2nd to Andersen to San Rafael’s Grand Ave Bike/Pedestrian Improvements within the Regional Climate Initiatives program as part of a funding exchange within the City of San Rafael, conditioned on San Rafael committing \$1 million in non-federal funds to the construction of the pathway, and a resolution of local support for the use of federal funds on the Grand Ave project, and TAM approval of the redirection of local measure funds between the projects; split out \$8,729,000 from the 511 Next Gen program to 511 Implementation within the Regional Active Operational Management program; program \$1,250,000 to Golden Gate Bridge Highway and Transportation District for the Bettini Transit Center as part of the Marin County Program; and program \$2,617,000 within the San Mateo County Program to the San Mateo County Office of Education for the SRTS program, including \$223,000 in supplemental funds from San Mateo’s discretionary balance.

On July 26, 2017, Attachment B-1 was revised to program \$12,000,000 to the US 101 Marin Sonoma Narrows project as part of a fund exchange agreement with Sonoma County Transportation Authority; \$11,000,000 in exchange funds are added to the program for tracking purposes, with the final \$1 million in exchange funds to be identified through a future Commission action.

On September 27, 2017, Attachment B-1 was revised to change the name of the Next Gen Arterial Operations Program (NGAOP) to Innovative Deployment for Enhanced Arterials (IDEA) to reflect program rebranding and additional focus on advanced technologies; program \$4,160,000 to Incident Management Implementation and \$8,840,000 to I-880 Integrated Corridor Mobility project within the Regional Active Operational Management program; split out the Connected Vehicles/Shared Mobility program into the Connected Vehicles/Automated Vehicles program for \$2,500,000 and the Shared Use Mobility program for \$2,500,000; and program \$16,000,000 for three corridors within the Freeway Performance Program, with \$8,000,000 for I-680, \$3,000,000 for I-880, and \$5,000,000 for SR-84.

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On October 25, 2017, Attachment B-1 was revised to program \$10,000,000 to the Bay Area Air Quality Management District for the Spare the Air program, in lieu of the Electric Vehicle Programs within the Regional Climate Initiatives Program, conditioned on the Air District contribution of an additional \$10 million to advance implementation of electric vehicles within the region.

On November 15, 2017, Attachment B-2 was revised to program \$200,000 in the Alameda County Program to the I-580 Corridor Study, to support a joint corridor study between Alameda County Transportation Commission (ACTC) and MTC; \$122,000 within the Napa County Program to Napa Valley Transportation Authority (NVTa) for the Napa County Safe Routes to School (SRTS) Program; and \$300,000 within the Contra Costa County Program to San Ramon for the San Ramon Valley Street Smarts Program.

On December 20, 2017, Attachments A, Appendix A-3, B-1, and B-2 were revised to program \$334 million in the County Program to local and county projects recommended by the nine Congestion Management Agencies (CMAs); redirect \$10,248,000 from BART Car Replacement/Expansion to Clipper within the Regional Transit Priorities Program; revise the CMA Planning Activities funding amounts to reflect the supplementary funds requested by several CMAs through their County Programs; and clarify the program details for the Local Housing Production Incentive program (also known as the *80K by 2020 Challenge Grant*).

On January 24, 2018, Attachment B-1 was revised to redirect \$4,100,000 from Performance-Based ITS Device Maintenance and Rehabilitation to I-880 Communication Upgrade and Infrastructure Gap Closures, within the Transportation Management System program.

On February 28, 2018, Attachments B-1 and B-2 were revised to program \$13 million in Innovative Deployments to Enhance Arterials (IDEA) program grants within the Regional Active Operational Management Program; redirect \$822,000 within Contra Costa County's Safe Routes to School Program (SRTS) for future SRTS projects; program \$2,813,000 to San Francisco SRTS Non-Infrastructure Program within the San Francisco County Program; and clarify MTC exchange fund projects.

On March 28, 2018, Attachment B-1 was revised to distribute the \$1.5 million Community-Based Transportation Planning Program among the nine county Congestion Management Areas

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(CMAs); clarify the limits of three Freeway Performance Program projects within the Regional Active Operational Management Program; and reflect the programming of \$30,000 in MTC exchange funds for Bay Area Greenprint Functionality Improvements, as part of the PCA program.

On April 25, 2018, Attachment B-1 was revised to program \$8,200,000 in Priority Conservation Area (PCA) grants within the North Bay PCA Program; \$3,400,000 to Sonoma County Transportation Authority (SCTA) for the Marin Sonoma Narrows B2 Phase 2 project, as part of an exchange agreement in which an equal amount of SCTA's future Regional Transportation Improvement Program (RTIP) funds will be programmed at MTC's discretion; \$7,288,000 in PDA Planning and Implementation grants; and \$500,000 to MTC for PDA Implementation.

On May 23, 2018, Attachments B-1 and B-2 were revised to change the project sponsor from MTC to VTA for the IDEA Program project at the Veteran's Administration Palo Alto Medical Center; redirect funds within the Santa Clara County OBAG 2 County Program to reduce San Jose's West San Carlos Urban Village Streetscape Improvements by \$2,050,000, redirecting \$1,000,000 from the project to Santa Clara's Saratoga Creek Trail Phase 1 and \$1,050,000 to Saratoga's Prospect Rd Complete Streets project; and direct an additional \$25,000 in unprogrammed balances within Santa Clara County OBAG 2 County Program to Saratoga's Prospect Rd Complete Streets project.

On June 27, 2018, Attachments B-1 and B-2 were revised to program \$800,000 to MTC's Carsharing Implementation and \$325,000 to Targeted Transportation Alternatives within the Climate Initiatives Program; redirect from MTC's 511 NextGen program \$8,271,000 to 511 Implementation, \$2,000,000 to Contra Costa Transportation Authority's (CCTA's) I-80 Central Ave Interchange Improvements project, and \$380,000 to an unprogrammed balance within the Regional Active Operational Management program; clarify the scope of MTC's Freeway Performance Program I-880 to reflect the project limits of I-80 to I-280; and redirect \$1,394,000 from Vallejo's Local Streets Rehabilitation project to Fairfield's Heart of Fairfield project within the Solano County Program.

On July 25, 2018, Attachment B-1 was revised to program \$1,600,000 to Santa Clara Valley Transportation Authority (VTA) for the SR 85 Transit Guideway Study as part of a fund exchange agreement; remove Rohnert Park's \$65,000 Central Rohnert Park PDA/Creekside Neighborhood Subarea Connector Path Technical Assistance grant from the Regional PDA

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Planning Grant program as it will be funded through a prior cycle; reduce the funding for Windsor's PDA Planning and Implementation Staffing Assistance grant by \$85,000 as this project will receive an equivalent amount of funds through a prior cycle; a total of \$150,000 balance created by these two revisions was returned to the Regional PDA Planning Grant Program un-programmed balance.

On September 12, 2018, Attachments B-1 and B-2 were revised to program \$3,000,000 within the Freeway Performance Program to the US 101 corridor in San Mateo and Santa Clara counties; direct an additional \$6,000,000 within the Freeway Performance Program to the I-680 corridor within Contra Costa County, \$4,000,000 of which is part of an exchange agreement with Contra Costa Transportation Authority (CCTA); redirect \$15,000 within the Innovative Deployment for Enhanced Arterials (IDEA) program from IDEA Technical Assistance to VTA's IDEA grant at the Veterans Affairs Palo Alto Medical Center; redirect \$48,000 from MTC's Clipper to the BART Car Replacement/Expansion project within the Transit Priorities program to reflect program amounts previously adopted through the Transit Capital Priorities (TCP) program; revise the amount programmed to VTA's SR 85 Transit Guideway Study within Regional Strategic Initiatives to \$1,200,000 to reflect amount previously approved; redirect \$1,214,000 from Berkeley's North Shattuck Avenue Rehabilitation project to its Southside Complete Streets and Transit Improvements project within the Alameda County Program; from Sunnyvale's East Sunnyvale Area Sense of Place Improvements, redirect \$1,000,000 to Los Altos' Miramonte Ave Bicycle and Pedestrian Access Improvements and \$1,140,000 to the Safe Routes to School program balance within the Santa Clara County Program; and program \$4,500,000 available from a previous funding cycle to the following projects within Regional Strategic Initiatives: \$617,000 to Novato's Pavement Rehabilitation (for Downtown Novato SMART Station) as part of a local funding exchange, \$1,120,000 to the Transportation Authority of Marin (TAM) for the Old Redwood Highway Multi-Use Pathway project, \$763,000 for San Rafael's Grand Ave Bridge project, and \$2,000,000 to TAM for the US 101 Marin Sonoma Narrows project.

On November 28, 2018, Attachment B-1 was revised to make adjustments related to the MTC/SCVTA Funding Exchange Agreement MTC Resolution No. 4356 and to the MTC/CCTA Funding Exchange Agreement MTC Resolution No. 4357, and to program \$4,000,000 in MTC exchange funds in accordance with MTC Resolution 3989, to the following projects: \$619,000 to CCTA for Innovative Deployment for Enhanced Arterials; \$621,000 to the city of Walnut Creek for innovative Deployment for Enhanced Arterials; \$500,000 to the city of Richmond for the

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Richmond-San Rafael Bridge Bikeway Access; \$1,160,000 to MTC for Richmond-San Rafael Bridge Forward; and \$1,100,000 to MTC for Napa Valley Transportation Demand.

On December 19, 2018, Attachments B-1 and B-2 were revised to redirect \$5,200,000 from MTC's I-880 Integrated Corridor Management (ICM) Central Segment to the I-880 ICM Northern Segment project within the Regional Active Operational Management Program; clarify the Diridon Integrated Station Area Concept Plan project within the Regional Priority Development Planning and Implementation Program to reference Santa Clara Valley Transportation Authority (VTA) as a project partner; within the Santa Clara County Program, redirect \$794,000 in unprogrammed balances to Sunnyvale's East Sunnyvale Sense of Place Improvements, clarify the remaining unprogrammed balance is discretionary, and clarify the division of funding for Santa Clara's Saratoga Creek Trail Phase 1 project between the county's Safe Routes to School program and its discretionary program.

On January 23, 2019, Attachment B-2 was revised to redirect \$15,980,000 within the San Francisco County Program from the Better Market Street project to the Central Subway project.

On February 27, 2019, Attachment B-1 was revised to change the fund source of \$3,779,849 programmed to the Golden Gate Bridge Suicide Deterrent in Surface Transportation Block Grant Program (STP) funds to federal Highway Infrastructure Program (STP Bump) funds provided in the Consolidated Appropriations Act, 2018. Of the \$3,779,849 freed up by this swap, \$1,000,000 is returned to the region's STP/CMAQ balance to help address the CMAQ shortfall as a result of the region becoming attainment for carbon monoxide (CO) and therefore receiving less CMAQ funds which are distributed based on air quality status. The remaining \$2,779,849 is held for future Commission action.

On March 27, 2019, Attachment A, Appendix A-8, Appendix A-10, and Attachment B-1 were revised to clarify provisions pertaining to the interim status report requirements for Priority Development Area (PDA) Investment & Growth Strategies; change the recipient of the Concord IDEA project from CCTA to the City of Concord and reduce the MTC Exchange funding from \$619,000 to \$589,000; and redirect the \$30,000 in MTC Exchange funds to a new MTC-led Concord IDEA project.

On June 26, 2019, Attachment B-2 was revised to program \$822,000 in unprogrammed Safe Routes to School Program (SRTS) balances within the Contra Costa County Program to six

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existing projects; and to redirect \$251,000 within the San Mateo County Program from Atherton's Middlefield Road Class II Bike Lanes to its James Avenue Rehabilitation.

On July 24, 2019, Attachment A was revised to delegate authority to the Executive Director or designee to sign Letters of Understanding for the exchange of STP/CMAQ funds with other regions, within certain conditions and limitations, and to delegate to a Committee of the Commission the authority to approve exchanges beyond these conditions and limitations.

On September 25, 2019, Attachments B-1 and B-2 were revised to clarify that the \$300,000 programmed to Alameda County Transportation Commission (ACTC) within the Community Based Transportation Plan (CBTP) Updates program will be directed to its Congestion Management Agency (CMA) Planning program as part of an internal fund exchange within ACTC; redirect \$9.6 million from 511 Implementation to 511 Next Gen within the Bay Area 511 Traveler Information Program; within the Freeway Performance Program redirect \$625,000 in from MTC's SR 84 (US 101 to I-880) to the environmental phase of MTC's I-580 WB HOV Lane Extension project and change the project sponsor of the I-80/Central Ave. Interchange Improvements project from the Contra Costa Transportation Authority (CCTA) to City of Richmond; within the Innovative Deployment to Enhance Arterials (IDEA) program, clarify that LAVTA is a partner agency for the Dublin Category 2 IDEA project; within the Transportation Management Systems (TMS) program, change the name of the overall program to Connected Bay Area, redirect \$2 million from the Detection Technology Pilot project and \$1.8 million from the Performance-Based ITS Device Maintenance and Rehabilitation project to provide an additional \$3.8 million to the I-880 Communications Upgrade and Infrastructure Gap Closures project; within the Incident Management program, redirect \$1 million from MTC's I-880 Integrated Corridor Management (ICM) Central Segment to the Northern Segment; within the San Francisco County program, redirect \$3,366,000 from John Yehall Chin Elementary Safe Routes to School (SRTS) Improvement; and within the Santa Clara County program, redirect \$1 million from Los Altos' Miramonte Ave Bicycle and Pedestrian Access Improvements project to Cupertino's McClellan Rd Separated Bike Lane project, and program \$1,346,000 in unprogrammed discretionary balances to Campbell's Harriet Ave Sidewalk project and Los Gatos Shannon Rd Complete Streets project.

On October 23, 2019, Attachment B-1 was revised to redirect \$3 million from MTC's Detection Technology Pilot project to establish the InterConnect Bay Area grant program within the Connected Bay Area program; direct \$5 million (\$4 million Solano County and \$1 million other

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MTC Resolution No. 4202, Revised

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North Bay counties) within the Housing Incentive Pool program to establish the Sub-HIP program, with specific projects to be recommended through future programming actions; and program \$1 million to BART for AB2923 Implementation from unprogrammed balances within the PDA Planning & Implementation program.

On November 20, 2019, Attachments B-1 and B-2 were revised to program \$6,023,000 in MTC exchange funds in accordance with MTC Resolution No. 3989 to 13 projects within the Priority Conservation Area (PCA) Grants program; and within the Contra Costa County program, redirect \$1,025,000 from Brentwood's Various Streets and Roads Preservation project to Pittsburg's Pavement Improvements project, redirect \$618,000 from San Pablo's Market Street Pavement Rehabilitation project to Giant Road Pavement Rehabilitation project; and revise the name of Walnut Creek's Ygnacio Valley Road Rehabilitation project to reflect the latest proposed scope of work.

On February 26, 2020, Attachments A, B-1, and B-2 were revised to program \$1 million to MTC for SR 37 corridor planning in Marin, Napa, Solano, and Sonoma Counties and \$3 million to MTC for I-80 corridor planning from the Carquinez Bridge to the San Francisco-Oakland Bay Bridge (SFOBB) Toll Plaza within the Freeway Performance Program; revise the name of the Concord Willow Pass Road Rehabilitation and Safe Routes to School project within the Contra Costa County Program to reflect the project's current scope; and clarify language within the OBAG 2 Project Selection Criteria and Programming Policy to reflect the Commission adoption of Housing Incentive Pool (HIP) program guidelines, MTC Resolution No. 4348.

On May 27, 2020, Attachment B-1 was revised to clarify the scope of MTC's Freeway Performance Program planning-only project on I-80 extends from Carquinez Bridge in Contra Costa to Fremont Street in San Francisco; change the sponsor for three projects within the Regional Priority Conservation Area (PCA) Grant program; and to redirect \$104,000 in the North Bay Priority PCA Grant program from Novato's Carmel Open Space Acquisition project to Novato's Hill Area National Recreation Area, as the former project has been cancelled.

On July 22, 2020, Attachment B-1 was revised to program \$5 million to five projects in Solano, Marin, Napa, and Sonoma Counties within the Housing Incentive Pool Pilot Program (Sub-HIP) and program \$1 million to the Napa Valley Forward Traffic Calming and Multimodal Improvements project within the Freeway Performance Program (FPP); and incorporate \$7,681,887 in federal Highway Infrastructure Program apportionment provided through the

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MTC Resolution No. 4202, Revised

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Department of Transportation Appropriations Act, 2020 to the Golden Gate Bridge Suicide Deterrent.

On September 23, 2020, Attachment B-2 was revised to redirect \$2,000,000 from Napa's Silverado Trail Five-way Intersection Improvement project to Napa Valley Transportation Authority's Vine Transit Bus Maintenance Facility within the Napa County Program, and \$1,394,000 from Fairfield's Heart of Fairfield Improvements to its Cadenasso Dr. repaving project within the Solano County Program.

On November 20, 2020, Attachment B-1 was revised to program \$1,000,000 to SFCTA for the environmental phase of the Yerba Buena Island/Treasure Island Multi-Use Pathway project within the Priority Conservation Area (PCA) Grants program, with payback from BATA at a future date; \$647,000 in MTC exchange funds in accordance with MTC Resolution No. 3989 to four projects within the Priority Conservation Area (PCA) Grants program; and to clarify the project sponsor of the Old Redwood Highway Multi-Use Pathway project as Larkspur, rather than the Transportation Authority of Marin (TAM).

On January 27, 2021, Attachments A and Attachment B-1 were revised, and Appendix A-11 was added, to incorporate additional funding into the OBAG 2 framework, including \$52.9 million in STP/CMAQ program balances made available through FY2018-FY2020 appropriations of Federal Highway Infrastructure Program (FHIP) funds, and a \$1.5 million balance redirected from the Cycle 1 STP/CMAQ Climate Initiatives program, as part of the Safe & Seamless Mobility Quick-Strike program.

On February 24, 2021, Attachment B-1 was revised to program a total of \$7.91 million in Federal Highway Infrastructure Program (FHIP) funds provided in the Consolidated Appropriations Act, 2021, and project savings from previous STP/CMAQ cycles to the Golden Gate Bridge Highway and Transportation District (GGBHTD) for shareable costs of an increase to the Golden Gate Bridge Suicide Deterrent System. Because the final FFY 2021 FHIP amount is not yet available at the time of the Commission meeting, the final split between the two fund sources will be adjusted by staff as a technical change, with the total amount not to exceed \$7.91 million.

On April 28, 2021, Attachment B-1 was revised to change the fund source of \$13,942,852 from Federal Highway Infrastructure Program (FHIP) funds to Surface Transportation Block Grant

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MTC Resolution No. 4202, Revised

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(STP) funds for the Gate Bridge Highway and Transportation District (GGBHTD) for the Golden Gate Bridge Suicide Deterrent System project; program \$61,708,245 in STP/CMAQ funds, and \$13,942,852 in FHIP funds redirected from the GGB suicide deterrent system, to the Transportation Authority of Marin (TAM) for the US-101 Marin-Sonoma Narrows Segment B7 project as part of the SB1/RMS alternative funding plan; and program \$99,840,510 in STP/CMAQ funds to the Solano Transportation Authority (STA) for the Solano I-80 Express Lanes project as part of the SB1/RMS alternative funding plan. The programmed funding to TAM and STA serves as a loan to the project sponsors to permit the projects to move to construction while Regional Measure 3 funds are unavailable. The loaned funds shall be repaid to MTC as non-federal funds and will be subject to future OBAG programming.

On May 26, 2021, Attachment B-1 and Appendix A-11 were revised to program \$34,593,076 in Federal Highway Infrastructure Program funds made available through federal Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) to augment the Regional Safe and Seamless Mobility Quick-Strike program framework; and to program \$7,775,000 in Priority Development Area (PDA) Planning and Implementation grants and \$87,000 in Regional PDA Supportive Studies within the Regional PDA Planning and Implementation program.

Further discussion of the project selection criteria and programming policy is contained in the memorandum to the Programming and Allocations Committee dated November 4, 2015, July 13, 2016, October 12, 2016, December 14, 2016, February 8, 2017 (action deferred to March 2017), March 8, 2017, April 12, 2017, May 10, 2017, June 14, 2017, July 12, 2017, September 13, 2017, October 11, 2017, November 8, 2017, December 13, 2017, January 10, 2018, February 14, 2018, March 7, 2018, and April 11, 2018; the Planning Committee dated April 6, 2018; and the Programming and Allocations Committee dated May 9, 2018, June 13, 2018, July 11, 2018, September 12, 2018, November 14, 2018, December 12, 2018, January 9, 2019, February 13, 2019, March 6, 2019, June 12, 2019, July 10, 2019, September 4, 2019, October 9, 2019, November 13, 2019, February 12, 2020, May 13, 2020, July 8, 2020, September 9 2020, November 4, 2020, January 13, 2021, February 10, 2021, April 14, 2021, and May 12, 2021; and the Planning Committee dated May 14, 2021.

Date: November 18, 2015
W.I.: 1512
Referred By: Programming & Allocations

RE: One Bay Area Grant Program Second Round (OBAG 2) Project Selection Criteria and Programming Policy

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 4202

WHEREAS, the Metropolitan Transportation Commission (MTC) is the Regional Transportation Planning Agency (RTPA) for the San Francisco Bay Area pursuant to Government Code Section 66500 et seq.; and

WHEREAS, MTC is the designated Metropolitan Planning Organization (MPO) for the nine-county San Francisco Bay Area region and is required to prepare and endorse a Transportation Improvement Program (TIP) which includes federal funds; and

WHEREAS, MTC is the designated recipient for state and federal funding assigned to the RTPA/MPO of the San Francisco Bay Area for the programming of projects; and

WHEREAS, state and federal funds assigned for RTPA/MPO programming discretion are subject to availability and must be used within prescribed funding deadlines regardless of project readiness; and

WHEREAS, MTC, in cooperation with the Association of Bay Area Governments (ABAG), the Bay Area Air Quality Management District (BAAQMD), the Bay Conservation and Development Commission (BCDC), California Department of Transportation (Caltrans), Congestion Management Agencies (CMAs), county Transportation Authorities (TAs), transit operators, counties, cities, and interested stakeholders, has developed criteria, policies and procedures to be used in the selection of projects to be funded with various funding including regional federal funds as set forth in Attachments A, B-1 and B-2 of this Resolution, incorporated herein as though set forth at length; and

WHEREAS, using the policies set forth in Attachment A of this Resolution, MTC, in cooperation with the Bay Area Partnership and interested stakeholders, will develop a program of projects to be funded with these funds for inclusion in the federal TIP, as set forth in Attachments B-1 and B-2 of this Resolution, incorporated herein as though set forth at length; and

WHEREAS the federal TIP and subsequent TIP amendments and updates are subject to public review and comment; now therefore be it

RESOLVED that MTC approves the “Project Selection Criteria and Programming Policy” for projects to be funded in the OBAG 2 Program as set forth in Attachments A, B-1 and B-2 of this Resolution; and be it further

RESOLVED that the regional discretionary funding shall be pooled and distributed on a regional basis for implementation of project selection criteria, policies, procedures and programming, consistent with the Regional Transportation Plan (RTP); and be it further

RESOLVED that the projects will be included in the federal TIP subject to final federal approval and requirements; and be it further

RESOLVED that the Executive Director or designee may make technical adjustments and other non-substantial revisions, including updates to fund sources and distributions to reflect final funding criteria and availability; and be it further

RESOLVED that the Executive Director or designee is authorized to revise Attachments B-1 and B-2 as necessary to reflect the programming of projects as the projects are selected, revised and included in the federal TIP; and be it further

RESOLVED that the Executive Director or designee shall make available a copy of this resolution, and attachments as may be required and appropriate.

METROPOLITAN TRANSPORTATION COMMISSION



Dave Cortese, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at the regular meeting of the Commission held in Oakland, California, on November 18, 2015

Attachment B-1

MTC Resolution No. 4202
OBAG 2 Regional Programs
FY 2017-18 through FY 2021-22
April 2021

Revised: 07/27/16-C 10/26/16-C 12/21/16-C 03/22/17-C 05/24/17-C 06/28/17-C 07/26/17-C 09/27/17-C 10/25/17-C
 12/20/17-C 01/24/18-C 02/28/18-C 03/28/18-C 04/25/18-C 05/23/18-C 06/27/18-C 07/25/18-C 09/26/18-C 11/28/18-C
 12/19/18-C 02/27/19-C 03/27/19-C 06/26/19-C 09/25/19-C 10/23/19-C 11/20/19-C 02/26/20-C 05/27/20-C 07/22/20-C
 11/20/20-C 01/27/21-C
 02/24/21-C 04/28/21-C 05/26/21-C

MTC Res. No. 4202 Attachment B-1

Adopted: 11/18/15-C

OBAG 2 Regional Programs Project List

PROJECT CATEGORY AND TITLE		Close Grouping Before Printing Not for Commission Action			
		SPONSOR	STP	CMAQ	Total STP/CMAQ Other
OBAG 2 REGIONAL PROGRAMS			\$484,059,423	\$196,665,000	\$680,724,423 \$99,975,260
1. REGIONAL PLANNING ACTIVITIES			STP	CMAQ	
Regional Planning	MTC		\$9,555,000		\$9,555,000
1. REGIONAL PLANNING ACTIVITIES		TOTAL:	\$9,555,000		\$9,555,000
2. PAVEMENT MANAGEMENT PROGRAM			STP	CMAQ	
Pavement Management Program	MTC		\$1,500,000		\$1,500,000
Pavement Technical Advisory Program (PTAP)	MTC		\$7,500,000		\$7,500,000
Statewide Local Streets and Roads (LSR) Needs Assessment	MTC/Caltrans		\$250,000		\$250,000
2. PAVEMENT MANAGEMENT PROGRAM		TOTAL:	\$9,250,000		\$9,250,000
3. PDA PLANNING & IMPLEMENTATION			STP	CMAQ	
PDA Planning and Implementation					
PDA Implementation	MTC		\$2,000,000		\$2,000,000
PDA Supportive Studies	MTC		\$587,000		\$587,000
PDA Planning					
Berkeley: San Pablo Avenue PDA Plan	MTC		\$750,000		\$750,000
Oakland: MacArthur Transit Village PDA; North Oakland/Golden Gate PDA Plan	MTC		\$800,000		\$800,000
Oakland: Eastmont Town Center/International Blvd; Fruitvale and Dimond; MacArthur Blvd Corridor; San A	MTC		\$800,000		\$800,000
Union City: Decoto Industrial Parkway Study Area Specific Plan 2.0	MTC		\$800,000		\$800,000
El Cerrito: San Pablo Avenue Specific Plan and EIR Update/Amendments	MTC		\$308,000		\$308,000
Moraga: Moraga Center Specific Plan Implementation Project	MTC		\$140,000		\$140,000
Richmond: Hilltop PDA Plan	MTC		\$750,000		\$750,000
San Pablo: Rumrill Blvd PDA Plan	MTC		\$250,000		\$250,000
Marin County: Urbanized Corridor/Marin City PDA Plan	MTC		\$300,000		\$300,000
San Rafael: Downtown Precise Plan	MTC		\$500,000		\$500,000
San Francisco: HUB Area EIR	MTC		\$500,000		\$500,000
San Francisco: Transit Corridors Study	MTC		\$500,000		\$500,000
Burlingame: Broadway Planning Area PDA Plan	MTC		\$400,000		\$400,000
South San Francisco: Downtown Station Area PDA Plan	MTC		\$500,000		\$500,000
Cupertino: VTA Cores and Corridors PDA Plan	MTC		\$400,000		\$400,000
Milpitas: Midtown PDA Plan	MTC		\$500,000		\$500,000
Palo Alto: University Ave/Downtown PDA Plan	MTC		\$800,000		\$800,000
San Jose/VTA: Diridon Integrated Station Area Concept Plan	MTC		\$800,000		\$800,000
San Jose: SW Expressway/Race Street Light Rail Urban Village Plans	MTC		\$500,000		\$500,000
Santa Clara: Downtown PDA Plan	MTC		\$400,000		\$400,000
Vacaville: Downtown Specific Plan	MTC		\$350,000		\$350,000
Santa Rosa: Downtown Station Area Specific Plan Update/Amendment	MTC		\$800,000		\$800,000
Staffing Assistance					
Emeryville: Mitigate Regulation-Induced Displacement, Streamlined Asset Mngmt	MTC		\$180,000		\$180,000
Fremont: SB743 Implementation	MTC		\$150,000		\$150,000
Hayward: SB743 Implementation	MTC		\$150,000		\$150,000
Oakland: ADU Initiative	MTC		\$200,000		\$200,000
Oakland: Innovative Construction Initiative	MTC		\$200,000		\$200,000
Concord: VMT-based Transportation Impact Standards	MTC		\$150,000		\$150,000
Concord: Galindo Street Corridor Plan	MTC		\$200,000		\$200,000
Lafayette: Updated Parking Ordinance and Strategies	MTC		\$150,000		\$150,000
San Jose: PDA/Citywide Design Guidelines	MTC		\$200,000		\$200,000
Windsor: Parking Management and Pricing	MTC		\$35,000		\$35,000
Technical Assistance					
Marin/Sonoma VMT Implementation Group	MTC		\$170,000		\$170,000
Napa/Solano VMT Implementation Group	MTC		\$170,000		\$170,000
Various Jurisdictions: VMT Implementation Group	MTC		\$140,000		\$140,000
Emeryville: Developing the Highest and Best Use of the Public Curb	MTC		\$65,000		\$65,000
Hayward: Micro Mobility/Safety Program	MTC		\$75,000		\$75,000
Oakland: General Plan Framework - PDA Community Engagement Program	MTC		\$65,000		\$65,000
San Leandro: BayFair TOD Infrastructure Design/Finance	MTC		\$150,000		\$150,000
San Francisco: Mission-San Jose PDA Housing Feasibility Analysis	MTC		\$65,000		\$65,000
San Francisco: PDA Density Bonus Program	MTC		\$65,000		\$65,000
Belmont: Transportation Demand Management Program	MTC		\$65,000		\$65,000
San Mateo: TDM Ordinance	MTC		\$150,000		\$150,000
Santa Rosa/Sonoma County: Renewal Enterprise District	MTC		\$150,000		\$150,000
San Jose: Urban Villages District Parking & Rezoning	MTC		\$120,000		\$120,000
BART AB2923 Implementation	BART		\$1,000,000		\$1,000,000
Unprogrammed balance	MTC		\$7,862,000		\$7,862,000
Community-Based Transportation Plan (CBTP) Updates	MTC				
ACTC: CMA Planning (for Community-Based Transportation Plans)	MTC		\$300,000		\$300,000
CCTA: Community-Based Transportation Plans	MTC		\$215,000		\$215,000
TAM: Community-Based Transportation Plans	MTC		\$75,000		\$75,000
NVTA: Community-Based Transportation Plans	MTC		\$75,000		\$75,000
SFCTA: Community-Based Transportation Plans	MTC		\$175,000		\$175,000
C/CAG: Community-Based Transportation Plans	MTC		\$120,000		\$120,000
VTA: Community-Based Transportation Plans	MTC		\$300,000		\$300,000
STA: Community-Based Transportation Plans	MTC		\$95,000		\$95,000
SCTA: Community-Based Transportation Plans	MTC		\$110,000		\$110,000
CBTP Program Evaluation	MTC		\$35,000		\$35,000
3. PDA PLANNING & IMPLEMENTATION		TOTAL:	\$20,000,000		\$20,000,000
4. CLIMATE INITIATIVES			STP	CMAQ	
Climate Initiatives					
Spare the Air & EV Program Outreach (for Electric Vehicle Programs)	BAAQMD			\$10,875,000	\$10,875,000
Carsharing Implementation	MTC			\$800,000	\$800,000
Targeted Transportation Alternatives	MTC			\$325,000	\$325,000
Spare the Air Youth Program - 2	MTC			\$1,417,000	\$1,417,000
4. CLIMATE INITIATIVES		TOTAL:		\$23,417,000	\$23,417,000

Attachment B-1

MTC Resolution No. 4202
OBAG 2 Regional Programs
FY 2017-18 through FY 2021-22
April 2021

Revised: 07/27/16-C 10/26/16-C 12/21/16-C 03/22/17-C 05/24/17-C 06/28/17-C 07/26/17-C 09/27/17-C 10/25/17-C
 12/20/17-C 01/24/18-C 02/28/18-C 03/28/18-C 04/25/18-C 05/23/18-C 06/27/18-C 07/25/18-C 09/26/18-C 11/28/18-C
 12/19/18-C 02/27/19-C 03/27/19-C 06/26/19-C 09/25/19-C 10/23/19-C 11/20/19-C 02/26/20-C 05/27/20-C 07/22/20-C
 11/20/20-C 01/27/21-C
 02/24/21-C 04/28/21-C 05/26/21-C

MTC Res. No. 4202 Attachment B-1

Adopted: 11/18/15-C

OBAG 2 Regional Programs Project List		Close Grouping Before Printing Not for Commission Action			
PROJECT CATEGORY AND TITLE	SPONSOR	STP	CMAQ	Total STP/CMAQ	Other
OBAG 2 REGIONAL PROGRAMS		\$484,059,423	\$196,665,000	\$680,724,423	\$99,975,260
5. REGIONAL ACTIVE OPERATIONAL MANAGEMENT		STP	CMAQ		
Active Operational Management					
AOM Implementation	MTC	\$23,737,000		\$23,737,000	
Bay Area 511 Traveler Information					
511 Next Gen	MTC	\$26,148,000		\$26,148,000	
511 Implementation	MTC	\$7,450,000		\$7,450,000	
Rideshare					
Rideshare Implementation	MTC		\$720,000	\$720,000	
Carpool Program	MTC		\$7,280,000	\$7,280,000	
Vanpool Program	MTC		\$2,000,000	\$2,000,000	
Commuter Benefits Implementation	MTC		\$674,000	\$674,000	
Commuter Benefits Program	MTC		\$1,111,000	\$1,111,000	
Napa Valley Transportation Demand Strategies (Fund Exchange)	MTC/NVTA				\$1,100,000
Bay Bridge Forward					
Transbay Higher Capacity Bus Fleet/Increased Service Frequencies	AC Transit		\$1,200,000	\$1,200,000	
Pilot Transbay Express Bus Routes	AC Transit		\$800,000	\$800,000	
Eastbay Commuter Parking	MTC	\$2,500,000		\$2,500,000	
Transbay Higher Capacity Bus Fleet/Increased Service Frequencies	WestCat		\$2,000,000	\$2,000,000	
Dumbarton Forward					
SR 84 (US 101 to I-880) Dumbarton Forward	MTC	\$4,375,000		\$4,375,000	
Richmond-San Rafael Bridge Forward					
Richmond-San Rafael Bridge Bikeway Access (Fund Exchange)	Richmond				\$500,000
Richmond-San Rafael Bridge Forward (Fund Exchange)	MTC				\$1,160,000
Freeway Performance Program					
Freeway Performance Program	MTC		\$14,240,000	\$14,240,000	
FPP: I-880 (I-80 to I-280)	MTC	\$3,000,000		\$3,000,000	
FPP: I-580 WB HOV Lane Extension (SR 24 to I-80/SFOBB approach) PL & ENV Only	MTC	\$625,000		\$625,000	
FPP: I-80 (Carquinez Bridge to Fremont St., SF) PL only	MTC	\$3,000,000		\$3,000,000	
FPP: CC I-680 NB HOV/Express Lanes (Ala Co. to Sol Co.)	MTC	\$10,000,000		\$10,000,000	
FPP: I-80 Central Ave Interchange Improvements	Richmond	\$2,000,000		\$2,000,000	
FPP: SR 37 (US 101 to I-80) PL only	MTC	\$1,000,000		\$1,000,000	
FPP: Napa Valley Forward Traffic Calming & Multimodal Imps.	MTC		\$1,000,000	\$1,000,000	
FPP: US 101 (SR 85 to San Francisco Co. Line)	MTC	\$3,000,000		\$3,000,000	
FPP: SCTA US 101/Marin Sonoma Narrows (MSN) B2 Phase 2	SCTA	\$1,000,000		\$1,000,000	
Program for Arterial System Synchronization (PASS)	MTC		\$5,000,000	\$5,000,000	
Innovative Deployments for Enhanced Arterials (IDEA)					
IDEA Technical Assistance	MTC	\$1,532,000		\$1,532,000	
IDEA Category 1					
AC Transit: Dumbarton Express Route (SR84)	MTC	\$2,300,000		\$2,300,000	
Alameda: Webster & Posey Tubes (SR 260), Park St	MTC	\$276,000		\$276,000	
Hayward: Various Locations	MTC	\$302,000		\$302,000	
Oakland: Bancroft Ave	MTC	\$310,000		\$310,000	
Pleasanton: Various Locations	MTC	\$290,000		\$290,000	
Union City: Union City Blvd & Decoto Rd	MTC	\$710,000		\$710,000	
San Ramon: Bollinger Canyon Rd & Crow Canyon Rd	MTC	\$563,000		\$563,000	
San Rafael: Downtown San Rafael	MTC	\$830,000		\$830,000	
South San Francisco: Various Locations	MTC	\$532,000		\$532,000	
San Jose: Citywide	MTC	\$1,400,000		\$1,400,000	
IDEA Category 2					
LAVTA/Dublin: Citywide	MTC	\$385,000		\$385,000	
Emeryville: Powell, Shellmound, Christie & 40th St	MTC	\$785,000		\$785,000	
Concord: Concord Blvd, Clayton Rd & Willow Pass Rd (Fund Exchange)	MTC				\$589,000
MTC Concord Blvd, Clayton Rd & Willow Pass Rd (Fund Exchange)	MTC				\$30,000
Walnut Creek: Various locations (Fund Exchange)	MTC				\$621,000
Los Gatos: Los Gatos Blvd	MTC	\$700,000		\$700,000	
UTA: Veterans Admin. Palo Alto Medical Center	UTA	\$845,000		\$845,000	
Connected Vehicles/Automated Vehicles (CV/AV)	MTC	\$2,500,000		\$2,500,000	
Shared Use Mobility	MTC	\$2,500,000		\$2,500,000	
Connected Bay Area					
TMS Implementation	MTC	\$2,910,000		\$2,910,000	
TMC Asset Upgrade and Replacement	MTC	\$1,150,000		\$1,150,000	
I-880 Communication Upgrade and Infrastructure Gap Closures	MTC	\$11,940,000		\$11,940,000	
InterConnect Bay Area Program	MTC	\$3,000,000		\$3,000,000	
Incident Management					
Incident Management Implementation	MTC	\$4,160,000		\$4,160,000	
I-880 ICM Northern	MTC		\$6,200,000	\$6,200,000	
I-880 ICM Central	MTC		\$2,640,000	\$2,640,000	
Unprogrammed Balance	TBD	\$380,000		\$380,000	
5. REGIONAL ACTIVE OPERATIONAL MANAGEMENT	TOTAL:	\$128,135,000	\$44,865,000	\$173,000,000	\$4,000,000
6. TRANSIT PRIORITIES		STP	CMAQ		
BART Car Replacement/Expansion	BART		\$99,800,000	\$99,800,000	
GGB Suicide Deterrent (for BART Car Replacement/Expansion)	GGBH&TD	\$9,760,668		\$9,760,668	\$30,239,332
Clipper	MTC	\$34,200,000		\$34,200,000	
Unprogrammed Balance		\$15,283,000		\$15,283,000	
6. TRANSIT PRIORITIES	TOTAL:	\$59,243,668	\$99,800,000	\$159,043,668	\$30,239,332
7. PRIORITY CONSERVATION AREA (PCA)		STP	CMAQ		
Regional Peninsula, Southern and Eastern Counties PCA Grant Program					
Bay Area GreenPrint: PCA Functionality Imps (Fund Exchange)	MTC/GreenInfo Network				\$30,000
PCA Grant Implementation	MTC/Coastal Conservancy				\$500,000
Alameda County: Niles Canyon Trail, Phase 1	Alameda County				\$321,000
Albany: Albany Hill Access Improvements	Albany				\$251,000

Attachment B-1
MTC Resolution No. 4202
OBAG 2 Regional Programs
FY 2017-18 through FY 2021-22
April 2021

MTC Res. No. 4202 Attachment B-1
 Adopted: 11/18/15-C
 Revised: 07/27/16-C 10/26/16-C 12/21/16-C 03/22/17-C 05/24/17-C 06/28/17-C 07/26/17-C 09/27/17-C 10/25/17-C
 12/20/17-C 01/24/18-C 02/28/18-C 03/28/18-C 04/25/18-C 05/23/18-C 06/27/18-C 07/25/18-C 09/26/18-C 11/28/18-C
 12/19/18-C 02/27/19-C 03/27/19-C 06/26/19-C 09/25/19-C 10/23/19-C 11/20/19-C 02/26/20-C 05/27/20-C 07/22/20-C
 11/20/20-C 01/27/21-C
 02/24/21-C 04/28/21-C 05/26/21-C

OBAG 2 Regional Programs Project List		Close Grouping Before Printing Not for Commission Action			
PROJECT CATEGORY AND TITLE	SPONSOR	STP	CMAQ	Total STP/CMAQ	Other
OBAG 2 REGIONAL PROGRAMS		\$484,059,423	\$196,665,000	\$680,724,423	\$99,975,260
Livermore: Arroyo Road Trail	Livermore				\$400,000
WOEIP/Urban Biofilter: Adapt Oakland Urban Greening in West Oakland	WOEIP/Urban Biofilter				\$300,000
EBRPD: Bay Trail at Point Molate (RSR Bridge to Point Molate Beach Park)	EBRPD				\$1,000,000
JMLT: Pacheco Marsh/Lower Walnut Creek Restoration and Public Access	John Muir Land Trust				\$950,000
SFCTA: Yerba Buena Island Multi-Use Pathway (PE/ENV)	SFCTA	\$1,000,000		\$1,000,000	
San Francisco: McLaren Park and Neighborhood Connections Plan	SF Recreation and Parks				\$194,000
San Francisco/Coastal Conservancy: Twin Peaks Trail Improvement	SF Rec and Park/Conservancy				\$74,000
GGNPC/NPS: Rancho Corral de Tierra Unit Management Plan Engagement	National Parks Service				\$200,000
SMCHD: Pillar Point Public Access Improvements	San Mateo Co. Harbor District				\$298,000
Menlo Park: Bedwell Bayfront Park Entrance Improvements	Menlo Park				\$520,000
San Mateo Co.: Colma Creek Adaptation Study (Colma Creek Connector)	San Mateo Co.				\$110,000
San Mateo Co.: San Bruno Mtn. Habitat Conservation Plan Grazing Pilot	San Mateo Co.				\$137,900
South San Francisco: Sign Hill Conservation and Trail Master Plan	South San Francisco				\$135,100
Point Blue: Pajaro River Watershed: Habitat Restoration and Climate Resilient Imps.	Point Blue Conservation Science				\$379,000
SCVOSA: Coyote Ridge Open Space Preserve Public Access, Phase 1	Point Blue Conservation Science				\$400,000
SCVOSA: Tilton Ranch Acquisition	Santa Clara Valley Open Space Auth.				\$1,000,000
North Bay PCA Grant Program					
Marin County: Hicks Valley/Wilson Hill/Marshall-Petaluma Rehab. (for Corte Madera: Par	Marin County	\$312,000		\$312,000	
Marin County: Hicks Valley/Wilson Hill/Marshall-Petaluma Rd Rehab	Marin County	\$869,000		\$869,000	
Novato: Nave Dr/Bell Marin Keys Rehabilitation (for Hill Recreation Area Imps.)	Novato	\$104,000		\$104,000	
Novato: Vineyard Rd Improvements (for Hill Recreation Area Imps.)	Novato	\$265,000		\$265,000	
National Parks Service: Fort Baker's Vista Point Trail	NPS	\$500,000		\$500,000	
NVTA: Vine Trail - St. Helena to Calistoga	NVTA	\$711,000		\$711,000	
Napa: Vine Trail - Soscol Ave Corridor	Napa	\$650,000		\$650,000	
Napa County: Silverado Trail Rehabilitation - Phase L	Napa County	\$689,000		\$689,000	
Solano County: Suisun Valley Farm-to-Market - Phase 3 Bike Imps	Solano County	\$2,050,000		\$2,050,000	
Sonoma County: Crocker Bridge Bike/Pedestrian Bridge	Sonoma County	\$1,280,000		\$1,280,000	
Sonoma County: Joe Rodota Trail Bridge Replacement	Sonoma County	\$770,000		\$770,000	
7. PRIORITY CONSERVATION AREA (PCA)	TOTAL:	\$9,200,000		\$9,200,000	\$7,200,000
8. BAY AREA HOUSING INITIATIVES		STP	CMAQ		
Bay Area Preservation Pilot (BAPP) (Funding Exchange)	MTC				\$10,000,000
Housing Incentive Pool	TBD		\$25,000,000	\$25,000,000	
Sub-HIP Pilot Program					
Fairfield: Pavement Preservation/Rehabilitation (for One Lake Apts. Linear Park Trail)	Fairfield	\$2,100,000		\$2,100,000	
Vacaville: Pavement Preservation/Rehabilitation (for Allison PDA Affordable Housing)	Vacaville	\$1,900,000		\$1,900,000	
Marin County: Marin City Pedestrian Crossing Imps.	Marin County		\$300,000	\$300,000	
NVTA: Imola Park and Ride	NVTA	\$300,000		\$300,000	
Santa Rosa: Downtown Multi-modal and Fiber Improvements	Santa Rosa		\$400,000	\$400,000	
8. BAY AREA HOUSING INITIATIVES	TOTAL:	\$4,300,000	\$25,700,000	\$30,000,000	\$10,000,000
9. SAFE & SEAMLESS MOBILITY QUICK-STRIKE		STP	CMAQ		
TBD	TBD	\$52,900,000		\$52,900,000	\$34,593,076
9. SAFE & SEAMLESS MOBILITY QUICK-STRIKE	TOTAL:	\$52,900,000		\$52,900,000	\$34,593,076
10. REGIONAL STRATEGIC INVESTMENTS (RSI)		STP	CMAQ		
CC I-680 NB HOV/Express Lanes Ala Co to Sol Co (Fund Exchange)	CCTA/MTC	\$4,000,000		\$4,000,000	
GGB Suicide Deterrent System	GGBHTD	\$7,910,000		\$7,910,000	
Pavement Rehab (for Downtown Novato SMART Station)	Novato	\$617,000		\$617,000	
Old Redwood Highway Multi-Use Pathway	Larkspur		\$1,120,000	\$1,120,000	
Grand Ave Bridge	San Rafael		\$763,000	\$763,000	
Grand Ave Bike/Ped Imps (for SMART 2nd to Andersen Pathway)	San Rafael		\$1,000,000	\$1,000,000	
US 101 Marin-Sonoma Narrows	TAM	\$2,000,000		\$2,000,000	
US 101/Marin Sonoma Narrows (MSN) B2 Phase 2 (Fund Exchange)	SCTA	\$15,400,000		\$15,400,000	
US 101 Marin-Sonoma Narrows (MSN) B7 (Loan for RM3)	TAM	\$61,708,245		\$61,708,245	\$13,942,852
I-80 Express Lanes in Solano County (Loan for RM3)	STA	\$99,840,510		\$99,840,510	
10. REGIONAL STRATEGIC INVESTMENTS (RSI)	TOTAL:	\$191,475,755	\$2,883,000	\$194,358,755	\$13,942,852
OBAG 2 REGIONAL PROGRAMS	TOTAL:	\$484,059,423	\$196,665,000	\$680,724,423	\$99,975,260

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City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	331-9513437153559	\$500,000	331-951343774237	\$500,000

Authorize the City Manager to execute the master funding agreement with the Metropolitan Transportation Commission for the Priority Development Area Planning Grant Program and the professional services agreement with Ascent Environmental for consultant services related to preparation of the Main Street/Gateway Specific Plan Update in the amount of \$930,708.00. . Approve the appropriation from the Metropolitan Transportation Commission through the PDA Planning Grant Program in the amount of \$500,000 into the Milpitas Gateway Specific Plan, CIP project (No. 3437).

Background:

The Milpitas Midtown Specific Plan was originally adopted by City Council in 2002 to maximize land use, transportation, and economic opportunities along the City's historic Main Street and to energize and catalyze mixed-use, transit-oriented development in the Midtown area, also known as the "heart" of Milpitas. Since adoption of the current Midtown Specific Plan, little of the community's vision for this area has been realized, and many potential development sites remain vacant and underutilized, especially along Main Street. Other commercial sites along the busy Calaveras Boulevard corridor are poised for new development or redevelopment to revitalize this important gateway to the City. Obstacles to redevelopment in the Midtown area include small and fragmented parcel sizes and ownership, depreciating assets, lack of a cohesive identity, gaps in the transportation network, and a perceived shortage of parking and public open space.

As part of the update process, the Midtown Specific Plan will be renamed the "Milpitas Gateway/Main Street Specific Plan" to reflect a greater focus on: 1) the historical significance of Main Street as a place for community members to gather and mingle; 2) the importance of Calaveras Blvd. as a primary gateway into central Milpitas, and; 3) the valuable 1-880 freeway frontage along Abbott Avenue with opportunities for new mixed-use commercial and office development. The Gateway/Main Street Specific Plan will provide a new vision and strategic policy framework to guide redevelopment and reinvestment in these three focus areas and transform this important gateway into an attractive and vibrant destination for the City and the region.

On April 6, 2021, the City Council adopted the FY2022-26 Capital Improvement Plan (CIP), which included the Milpitas Gateway/Main Street Plan (Midtown Specific Plan Update) as Project No. 3437 with an initial outlay of up to \$960,000 from the Community Planning Fund. As of today, the remaining project balance is \$828,000. On May 26, 2021, the Metropolitan Transportation Commission (MTC) awarded the City of Milpitas an additional \$500,000 through its Priority Development Area (PDA) Planning Grant Program. This program provides funding for specific plans that result in intensified land uses around public transit hubs and bus and rail corridors in the Bay Area. In awarding this funding to the City of Milpitas for the Midtown Specific Plan Update, the MTC noted that preference was given to proposals that would implement Plan Bay Area 2050 and support housing production at all income levels.

Analysis:

On March 16, 2021, the Purchasing Division released RFP No. 2515 seeking proposals from qualified vendors with demonstrated experience in municipal planning services to assist the City with the Milpitas Gateway/Main Street Specific Plan (Midtown Specific Plan Update).

The RFP was publicly noticed in accordance with the City's Municipal Code, advertised on the City's website, and emailed to companies registered with the City via ProcureNow.com, the City's eProcurement system. Additionally, the RFP was published on the City website. Upon release, 404 potential firms received the solicitation notification, and 46 firms downloaded the RFP documents.

The Purchasing Division received three (3) proposals by 2:00 pm on April 23, 2021, the published deadline to provide a response to the RFP. After an initial evaluation by five City staff members who comprised the evaluation committee, all three firms were invited to participate in a virtual interview via Zoom to gather information and ask clarifying questions regarding their proposals. Interviews were held on June 4, 2021 and scoring was finalized on June 16, 2021.

The three firms invited to participated in the interview process with the evaluation committee were:

1. Ascent Environmental
2. M-Group
3. Raimi + Associates

The evaluation committee reviewed proposals based on the following criteria:

1. Organization
2. Staff
3. Experience
4. Specific Management Approach
5. Professional Standing
6. Familiarity with Locality
7. Quality Control and Assurances
8. Proposed Compensation

The table below shows the final evaluation scores with the recommended firm highlighted in green:

Main Street/Gateway Specific Plan Update RFP No. 2420	Ascent Environmental	M-Group	Raimi + Associates
Final Evaluation Score	93	76.2	70.3

After compiling preliminary scoring, the top firm, Ascent Environmental, was invited to continue in the evaluation process by providing a detailed scope of work with the proposed compensation for all services outlined in the RFP. Staff's recommendation to the Council is based on the final proposal from Ascent Environmental.

Policy Alternatives:

Alternative 1: Do not authorize the City Manager to execute the master funding agreement with MTC and the professional services agreement with Ascent Environmental.

Pros: This action would avoid expending City staff time and resources to manage the Main Street / Gateway Specific Plan Update and consultant team.

Cons: In failing to update the Midtown Specific Plan, the City would forgo \$500,000 in approved PDA grant funds, which need to be expended within 36 months of execution of a funding agreement with MTC. Without

the Milpitas Gateway/Main Street Specific Plan, the existing MidtownD Specific Plan would remain in place. Absent new policies and standards to facilitate catalytic development, the Main Street area and Calaveras Corridor would likely continue to suffer from disinvestment and a lack of identity. The City would potentially miss out on the opportunity to revitalize an important area of the city.

Reason not recommended: In light of the City's anticipated Regional Housing Needs Allocation (RHNA) from the Association of Bay Area Governments (ABAG), the Milpitas Gateway/Main Street Specific Plan is needed to help Midtown realize its full development potential and support regional and state efforts to address critical housing needs. If Midtown is unable to accommodate more housing development, it will be more challenging to meet the City's RHNA obligation. Moreover, the Milpitas Gateway/Main Street Specific Plan is needed to implement the vision of the recently adopted General Plan, which establishes Midtown as a key opportunity area for new economic growth and development in the City.

Fiscal Impact:

The cost to provide planning services for the Milpitas Gateway/Main Street Specific Plan will be covered by a combination of Community Planning Fees and the General Government CIP Fund in the amount of \$828,000, and funds received from MTC through the PDA Planning Grant Program in the amount of \$500,000. As noted above, the Milpitas Gateway Specific Plan is a budgeted CIP project (No. 3437).

California Environmental Quality Act:

Not applicable. The selection and contractual arrangement of planning services do not constitute a project, in accordance with Section 15378 of the CEQA Guidelines.

Recommendations:

Authorize the City Manager to execute the master funding agreement with the Metropolitan Transportation Commission for the Priority Development Area Planning Grant Program and the professional services agreement with Ascent Environmental for consultant services related to preparation of the Main Street/Gateway Specific Plan Update in the amount of \$930,708.00. . Approve the appropriation from the Metropolitan Transportation Commission through the PDA Planning Grant Program in the amount of \$500,000 into the Milpitas Gateway Specific Plan, CIP project (No. 3437).

Attachments:

1. Master Funding Agreement with MTC
2. Professional Services Agreement with Ascent Environmental
3. Budget Change Form

☐ **Check if City Council Approval required.**

Meeting Date: September 21, 2021

Requested by:	Department Head: Ned Thomas	Date: September 21, 2021
Reviewed by:	Finance Director: Lauren Lai	Date: September 21, 2021
Date approved by City Council, if required:		Confirmed by:

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

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 **Ascent Environmental, Inc.** a corporation with its principal place of business at **455 Capital Mall Suite 300 Sacramento CA 95814** (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:

MAIN STREET GATEWAY SPECIFIC PLAN UPDATE
(hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

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

2. Compensation.

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

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Nine Hundred Thirty Thousand Seven Hundred Eight Dollars and Zero Cents (\$930,708.00)**. 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, 2023**, 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.

d. Consultant acknowledges that this Project has been commissioned as part of a grant by the Metropolitan Transportation Commission ("MTC"), a regional transportation planning agency established pursuant to California Government Code § 66500 *et seq.* To the extent required by MTC, Consultant agrees to work with City to ensure compliance with any other applicable laws, codes and regulations that are required to be complied with per MTC's requirements.

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. Consultant acknowledges that this Project has been commissioned as part of a grant by MTC. To the extent additional insurance requirements are required by MTC, Consultant agrees to work with the City to obtain insurance requirements that are acceptable to MTC.

12. Indemnification.

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

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

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the

services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

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

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

14. Verification of Employment Eligibility.

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

15. City Material Requirements.

[RESERVED]

16. 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.

17. 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.

18 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.

19. Organization

Consultant shall assign **CHRISTINE BABLA** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

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

21. 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

CONSULTANT:

Ascent Environmental, Inc.

455 Capital Mall, Suite 300

Sacramento, CA 95814

Attn: Director of Planning

Attn: Christine Babla, Director

and shall be effective upon receipt thereof.

22. 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.

23. 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.

24. 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.

25. Severability

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

26. 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.

27. Non-Waiver

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

28. Time of Essence

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

29. 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.

30. Prohibited Interests

Consultant 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.

31. 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 ASCENT ENVIRONMENTAL, INC**

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

CITY OF MILPITAS

Approved By:

Steven G. McHarris, City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved:

Walter C. Rossmann, Risk Manager/Director
of Finance

Approved As To Content:

Ned Thomas, Director of Planning

ASCENT ENVIRONMENTAL, INC.

Signature

Name

Title

Date

DIR Registration Number (If Applicable)

EXHIBIT A

Scope of Services

MAIN STREET/GATEWAY SPECIFIC PLAN UPDATE

[CONSULTANTS WORKPLAN BEGINS ON FOLLOWING PAGE]

I. PROPOSED SOLUTIONS (REVISED)

Ascent's scope of work reflects how we intend to address the City's goals for the Plan Area. Based on our understanding of the RFP, we have included scope for visioning, community engagement, scenario planning, a new Specific Plan Update document, and associated environmental analysis. We are happy to work with the City to revise the scope of work to meet goals and staffing needs for this work program.

Task 1: Plan Boundaries, Data Gathering, and Assessments

Task 1.1: Kick-off Meeting and Site Tour

Ascent and its teaming partners (The Ascent Team) will initiate the project with a (virtual) kick-off meeting to discuss the following:

- ▶ City goals and objectives
- ▶ Team roles and responsibilities
- ▶ Project area context and efforts under way
- ▶ Planning Area/Focus Area boundaries
- ▶ Schedule and key milestones
- ▶ Scenario planning
- ▶ Community engagement and project branding
- ▶ Coordination with the city team and other departments

During this time, we will also submit a list of data and information needs. Shortly after the kick-off meeting (on the same or separate day), pending public health directives, team members will conduct a site tour to examine key issues, focus area context conditions, and the extent of Plan Area boundaries. Following the site tour, we will coordinate with the City to discuss focus area boundaries and base map preparation, including use of scenario planning tools for mapping.

Task 1.2: Material Review and Preliminary Mapping

Following the kick-off meeting and data exchange, Ascent will prepare our working map database and

initial series of maps that depict the city, community, and local context. The maps will establish the baseline and Plan Area boundaries for subsequent work.

As part of this phase, the Ascent Team will review relevant existing and in-progress studies to serve as a basis for our initial analysis of the Plan Area. To avoid “reinventing the wheel” and ensure continuity between plans, we will build from recent or developing plans and studies in the Plan Area, including the:

- ▶ 2002 Milpitas Midtown Specific Plan
- ▶ Newly adopted 2020 General Plan
- ▶ 2024-2030 Housing Element Update
- ▶ City of Milpitas Municipal Code
- ▶ City of Milpitas 2020 Economic Development Strategy and Implementation Actions
- ▶ City of Milpitas Climate Action Plan
- ▶ Milpitas Metro Specific Plan studies
- ▶ Cultural Resources Register
- ▶ Milpitas Parks and Recreation Master Plan Update
- ▶ Bikeway and Pedestrian and Trails Master Plan
- ▶ City of Milpitas Streetscape Master Plan
- ▶ Utility Master Plan Updates for water and sewer and storm drainage

Our team will leverage the work that has been produced and highlight key take aways that will inform the focus of latter studies and solutions in the Plan Area.

Task 1.3: Existing Conditions Assessment

The Ascent Team will assess the existing physical context of the Plan Area, including land use and urban form, transit and circulation network, infrastructure and utilities, and market analysis. We will focus our analysis on identifying preliminary opportunities and constraints related to land use and development, catalytic sites (in coordination with input from city staff), and potential circulation and infrastructure improvements that would support the goals of the Specific Plan effort.

Deliverables for this task will be concise and graphic in nature, focusing on implementation-oriented opportunities that can be analyzed and addressed through the Specific Plan Update. Ascent will prepare a brief graphic PowerPoint presentation, summarizing the results of the Existing Conditions Assessment for use by the team and city for public meetings.

Land Use, Zoning, and Urban Form Analysis

Ascent will review the Specific Plan and assess the progress made on the specific plan in terms of construction and improvements to date, remaining unrealized projects, future opportunities, and potential constraints both on-the-ground and from a regulatory standpoint. We will prepare a graphic Land Use, Zoning, and Urban Form Memo, formatted as a PowerPoint, addressing the following:

- ▶ Focus areas, neighborhoods, and corridor segments that contribute to the identity of the Plan Area. Ascent will describe the urban form and character within each of these focus areas, including legacy businesses or anchors that contribute to the character and culture of the area.
- ▶ Existing and planned land uses, zoning, and Specific Plan regulations, including development standards, such as setback conditions, height, floor area ratio, housing density, and other determinants that have dictated urban form.
- ▶ Vacant and underutilized parcels and opportunity sites.
- ▶ Existing and planned environmental features, open space, and parks, including opportunities for new public realm spaces, open spaces, and other connections.
- ▶ Overview of known, eligible, and designated historic and cultural resources in and adjacent to the Plan Area, relying on existing city background documents, including the City of Milpitas Cultural Resources Register and a cultural resources database search.

This examination will help us understand where development controls are conducive to or hindering

the transformation of the Plan Area, honing in on addressing key updates to the Specific Plan that will remove barriers, modernize and update the approach, and facilitate the desired evolution of the Plan Area.

Market Analysis

BAE will prepare a high-level real estate market analysis to evaluate market support for new development in the Plan Area based on current and future anticipated market conditions. For each use, BAE will identify the inventory in the appropriate market area and analyze data related to key metrics such as vacancy, rental rates, new construction deliveries, net absorption, and future demand. The market analysis will also identify, describe, and analyze the impact of national and regional trends on demand for the identified land uses within the Plan Area. These trends could include shifts in preference for office locations and type of workspace, disruption in the retailing industry impacting space demand, trends in amenities desired by residents and office tenants, and potential medium- to long-term impacts on residential and nonresidential real estate demand due to COVID-19. The market analysis will study up to three (3) land uses, such as office, retail, and residential uses. For the analysis of retail uses, BAE will coordinate with Greensfelder Real Estate Strategy.

The market analysis will identify opportunities and constraints for the Plan Area to inform the mix of uses in the Specific Plan. In addition, the analysis will identify potential challenges to achieving the desired mix of uses in the Plan Area and recommend strategies to address these challenges as appropriate.

Affordable Housing and Community Benefits Analysis

BAE will identify options for the promotion and delivery of affordable housing in the Plan area, and identify options for the Plan's community benefits framework. The analysis will draw on data assembled from the market analysis task to identify market conditions that affect the production of affordable housing in the Plan area. In addition, BAE will request information from the City regarding affordable housing production in the Plan Area as well as outcomes from the Plan's community benefits framework. BAE will also review existing policies related to affordable housing production and community benefits, including but not limited to citywide policies, policies specifically affecting the Plan area, and any policies included in the Milpitas Metro Specific Plan. Based on an analysis of these trends, BAE will identify opportunities to improve affordable housing production and community benefits outcomes. As a part of this work, BAE will coordinate with City staff and the consultant team to

align affordable housing and community benefits goals with the overall goals of the Plan. BAE will then develop a menu of options for enhancing affordable housing production and community benefits outcomes in the Plan area, along with trade-offs associated with various policy options. BAE will prepare an administrative draft affordable housing and community benefits promotion and delivery options memorandum for City review. Following receipt of a single set of consolidated comments on the administrative draft, BAE will revise the memorandum to prepare a draft for public review.

Transportation Analysis

Fehr & Peers will prepare an existing conditions transportation memo, including the following elements:

- ▶ Review of relevant documents affecting transportation policies and infrastructure in the Plan Area.
- ▶ Mapping of the street network by functional class, the bicycle and pedestrian network, transit routes and services, truck routes, and key gaps or missing links in the vehicular and bicycle/pedestrian network.
- ▶ Daily roadway volumes on up to 15 roadway segments, using data collected for the General Plan update.
- ▶ Peak hour intersection volumes and LOS at up to ten key intersections, using data collected and analyzed for the General Plan update.
- ▶ As an optional task, Fehr & Peers can collect new counts at up to five intersections, if needed, supplemented by StreetLight data to check COVID recovery count data.
- ▶ Resident and worker travel characteristics for the City and the Plan area based on census data, using the Census Transportation Planning Package database.
- ▶ A summary of transportation opportunities and constraints for the Plan Area.

Public Infrastructure and Utilities Analysis

BKF will visit the site to review the existing site constraints and conditions. Based on the site visit, and BKF's previous Milpitas Midtown Specific Plan project experience, BKF will prepare a Public Infrastructure and Utilities Memo, including the following elements:

- ▶ Confirm City implemented utility master plan or other infrastructure improvements.
- ▶ Document an overall utility base map for use by the team, including exhibits for each utility system.
- ▶ Identify any potential challenges to development.
- ▶ Confirm the scope of survey services to support the planning and permit processes.

TASK 1 DELIVERABLES

- ✓ Kick-off Meeting Materials and Meeting Summary
- ✓ Preliminary Mapping Database
- ✓ Land Use, Zoning, and Urban Form Analysis
- ✓ Market Analysis
- ✓ Affordable Housing and Community Benefits Analysis
- ✓ Transportation and Circulation Analysis
- ✓ Public Utilities and Infrastructure Analysis
- ✓ Brief Graphic PowerPoint Presentation Summarizing Existing Conditions Assessment Findings for Use in Public Meetings (For All Studies)

Task 2: Public Outreach and Engagement

We have structured the community outreach process to align with the city's desired approach to address each focus area separately, while also comprehensively addressing the larger Plan Area. However, to efficiently meet the timeline desired for the completion of the Specific Plan, we propose the concurrent sequencing of focus area meetings to advance the Plan in a coordinated manner. We will evaluate the issues and opportunities of each focus area, as well as how they will work together and in the broader context of Midtown, and reinforce their individual area strengths and placemaking goal, rather than compete for similar market needs. The Ascent Team proposes using a variety of approaches to engage and collect input from the community, as further described in the tasks that follow.

Task 2.1: Community Engagement Strategy

Shortly after the project kick-off meeting (Task 1.1), Ascent and Plan to Place will engage the City in a meeting to discuss the approach and strategy to community engagement and project branding. The Community Engagement Strategy will identify:

- ▶ Roles and responsibilities of the consultant team, staff, and stakeholders in the planning process.
- ▶ Timelines for outreach activities, coordinated with the phased presentation of each focus area.
- ▶ Communication strategy for creating awareness, invitation, and creative buzz about the project.

In addition to engaging residents, business owners, and development community stakeholders, the Engagement Strategy will also address outreach to engage minority residents and non-English speakers through local community channels and/or pop up events at strategic locations in the city.

Task 2.2: Project Branding and Communication

Materials

The Ascent Team will develop a project brand, anticipated to include a logo, tagline, font, and color palette for the Milpitas Main Street/Gateway Specific Plan Update. This will be used for all messaging and collateral, including the project website, PowerPoint presentations, print and digital materials, and final Specific Plan deliverable. As an optional task, Studio J9 will develop coordinated concept branding for streetscape and wayfinding elements, see Task 3, for more information related to that effort.

Task 2.3: Project Website

The Ascent Team will work with the City to create and maintain a project website to be used to publicize the project timeline and updates, host community engagement activities, including workshops, surveys, and public review draft documents.

Task 2.4: Stakeholder Interviews

Early in the process, Ascent will conduct six stakeholder interview sessions in small group settings of no more than five people per group and lasting no more than 1-1/2 hours in duration. These stakeholder interviews may be organized by those wishing to participate and provide feedback on the individual focus area and/or the Plan Area. We will work with City staff to identify the list of individuals and groups to participate in the interviews. Potential candidates may include business and property owners, business representatives, neighborhood associations, developers and real estate professionals, community groups, and other stakeholders who have an interest in the Plan Area. The interviews will allow participants to speak to issues and opportunities in a confidential setting that allow for honest feedback without assigning comments to individuals.

Task 2.5: Community Workshops

Ascent and Plan to Place will coordinate with City staff in the preparation for and execution of up to two Community Workshops to provide the community and decision makers with basic knowledge focused on the Specific Plan Update, share preliminary planning scenarios and provide progress updates. The team will be prepared to implement digital virtual meeting formats to share information about the project, answer questions and gather feedback to address community concerns. It is anticipated that live polling and other interactive tools will be used to complement virtual meeting platforms to share and gather input during the meeting. Community workshops will be advertised digitally on social media platforms and the City's website along with physical mailers (by City) that can be mailed directly to residents.

Workshop #1 This visioning event will allow the public

to provide input on plan priorities, needs, and their vision and ideas for the Plan Area and focus areas. These visioning events will allow the public to provide input on plan priorities, needs, and their vision and ideas for the Plan Area and focus areas.

Workshop #2 Ascent and Plan to Place will host a community workshop, to solicit feedback on plan alternatives in order to arrive at a preferred plan, as well as framework strategies and placemaking concepts that will form the basis of the Specific Plan.

In conjunction with each of the workshops, an online community survey, polling, or other activity will be conducted on the project website, to expand the reach of the effort out to the community and extend the feedback period for those who were not able to participate real-time in live events.

Task 2.6: Pop-Up Events (Up to 2)

Pop-up events are proposed to collect additional input within each of the focus areas. If/once shelter-in-place restrictions are lifted in 2021, Plan to Place can assist the project team and City staff with the preparation for and facilitation of "pop-up" or intercept workshops to meet the community where they are. The objectives will be to:

- ▶ Meet with the community at times and locations that are convenient and safe to them, such as farmers markets or other local events; and
- ▶ Facilitate informal workshops to share information about the engagement effort and gather input through interactive tools while practicing social distancing and safety measures.

Since the Main Street Community Conversations will have occurred prior to the project kick-off, the pop-up events may focus on users and stakeholders within the Calaveras Gateway and Abbott Avenue/I-880 focus areas.

Task 2.7: Community Open House

Ascent and Plan to Place will coordinate and lead an Open House event, either digitally or in person to share the Specific Plan Update and gather final input during the Public Review process. This is anticipated as an open meeting where participants can drop in throughout a designated time to ask questions and share input about different aspects of the Specific Plan.

Task 2.8: Meet with Technical Advisory Committee

Ascent will attend up to **four** meetings with a Technical Advisory Committee (TAC). The City will organize the TAC, which can include staff from various city departments, as well as public agencies, such as VTA and other key partners in the process. The first meeting will be to share the project scope and timeline and query the TAC for feedback on project objectives, area boundaries,

and known or potential issues within the Plan Area that need to be studied. The **subsequent three meetings with the TAC will address planning scenarios; review the preferred plan and draft strategies; and provide an update and discuss any comments to the Administrative Draft Specific Plan.**

Task 2.9: Support Commission and City Council Study Sessions

We understand that the City Council will take an active role in the planning process, and have planned to provide support for up to seven study session meetings, including up to six study sessions with the City Council, as well as one study session with the Planning Commission. Agendas and timing will be refined through the planning process in coordination with the City. For scoping purposes, we have identified potential agenda topics for each of the study sessions below, and have included the approximate timing and relationship to the overall work program on the project timeline:

Study Session #1 Study session with the City Council. This session will be an opportunity for the team to hear the Council's vision, as well as discuss process, strategy, and engagement.

Study Session #2 Study session with the City Council, to discuss plan priorities.

Study Session #3 Study session with the City Council, to discuss land use and development scenarios and strategies.

Study Session #4 Study session with the City Council, to discuss transportation and mobility.

Study Session #5 Study session with the City Council, to discuss public realm design and improvements.

Study Session #6 Study session with the City Council, to discuss economic development, funding, and incentives.

Study Session #7 Study session with the Planning Commission, to provide an overview of the planning process and provide a briefing on the Administrative Draft document.

Ascent will prepare and present a PowerPoint presentation for each meeting and take notes on input received from these meetings. To support the efficiency of the planning process, joint study sessions are encouraged, when possible.

TASK 2 DELIVERABLES

- ✓ Community Engagement Strategy
- ✓ Project Branding and Communication Materials
- ✓ Project Website
- ✓ Stakeholder Interview Summaries
- ✓ Pop-Up Event Summaries (Up to 2 Events)

- ✓ Community Workshop Materials and Meeting Summaries (Up to 2 Events)
- ✓ Community Open House Materials and Meeting Summary (1 Event)
- ✓ TAC Materials and Meeting Summaries (Up to 4)
- ✓ Commission and Council Materials and Meeting Summaries (Up to 7)

Task 3: Visioning, Scenarios Planning, & Preferred Plan

Task 3.1: Initial Visioning

The community engagement process, described in Phase 2, will begin to reveal the needs and desires of the community and neighborhood stakeholders leading to identification of community priorities. These may take the form of physical, social, or economic outcomes.

The Ascent Team will engage the City in a brainstorming session to describe what the priorities are and use them to prepare a *draft vision and guiding principles, and confirm the range of options*. Key members of city staff from the TAC, such as Economic Development, Transportation, Public Works, and city staff leading other planning efforts, may be encouraged to participate, depending on the City's goals for the process. As part of this process, we will share inspirational images to consider as planning benchmarks or precedents for the evolution of the Plan Area, and our retail specialist will share a presentation framing the state of retail-post COVID and providing best practices for integrating ground-floor commercial uses into mixed-use development. Ascent will document the outcomes in a *Draft Vision Memo*.

Task 3.2: Scenario Planning

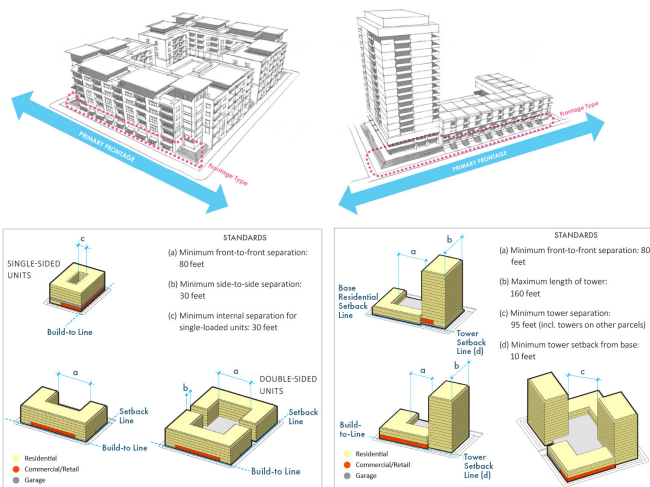
Ascent will work with city staff to prepare up to 3 development options, testing different development frameworks, including land use, intensity, mobility/connectivity, parks and open space, and block and development configurations. We will work with the



city to confirm the preferred method for scenario planning, including utilizing ESRI ArcUrban or Urban Footprint, to prepare focus area options to evaluate the range of development potential, and how each option achieves the city's objectives and key metrics, such as achieving housing goals, commercial development, trip generation, and greenhouse gas emissions. The scenario evaluation may also be coordinated with and/or inform proposed EIR alternatives and Climate Action Planning goals.

Task 3.3: Preferred Draft Plan and Strategies for Incorporation into the Plan

Based on city and community feedback, the Ascent Team will develop a preferred plan and coordinate with the city on strategies to implement the vision for the Plan Area, with a focus on responding to city and/or community issues and priorities and addressing the tasks described on pages 10-11 of the RFP. These strategies will serve as the basis for the development of the Specific Plan chapters.



Land Use Updates, Urban Form, and Parking

As part of this task, in conjunction with the Economic Development and Retail Strategies, the Ascent urban design team will conduct 2d and 3d testing to evaluate prototypical projects from a design, programming, and yield standpoint, as well as to test existing and proposed development and design standards, such as development intensities, setbacks, stepbacks, open space requirements, and parking requirements.

Ascent will prepare a preferred plan and associated framework diagrams, with accompanying strategies and imagery to describe land use and urban form that correspond to the vision and development projections. We will prepare accompanying development yield tables, and an illustrative master plan graphic that depicts how the focus areas can be “stitched” into the broader Midtown District.

Economic Development and Retail Strategies

The Ascent Team, led by BAE with support from Greenfelder Commercial Real Estate Strategy, will support the economic development component of the Specific Plan by building from the 2020 Economic Development Strategy and implementing many of its specific actions under the new Specific Plan framework. This task will overlap with the development of the Specific Plan Implementation chapter, with the goal of having the Specific Plan provide a clear pathway to overcome current obstacles that have inhibited new development and redevelopment of property in the plan area. Work under this task will include:

- **Opportunity Sites.** Identification of publicly- and privately-owned opportunity sites and their market-supported potential uses and recommended actions to activate these sites which would include the Serra Center; MUSD properties, Santa Clara County-owned properties, the vacant Hammond Way, lands with annexation potential south of Calaveras Boulevard along Abbott Avenue, indicating which sites would be most suitable for new local restaurants and independent retail. Evaluate the alignment of existing land use policies and regulations with the level of market support for permitted uses and what steps need to be taken to facilitate new development.
- **Retail Audit of Zoning Code.** Greenfelder Real Estate Strategy will review the zoning code, current specific plan, and development standards and draft a memo recommending how they might be updated and/or integrated to facilitate, expedite, and expand retail in the Plan Area.
- **Retail Strategies Memo.** Greenfelder Real Estate Strategy will draft a memo describing economic development and retail strategies to reposition the study area for main street development as well as redevelopment and infill of the larger plan area. The memo will address the following: (1) commodity/specialty retail (2) solutions for activating the main street frontage and ensuring retail resilience, including Post-COVID retail impacts including short versus long term implications; (3) retail strategies for business attraction including how to encourage retail, how to avoid overbuilding, addressing 18-hour/15-minute cities, and (4) potential objective design standards to facilitate successful ground floor commercial space.
- **Property-based Business Improvement District (PBID).** Expand the Economic Strategy Actions related to a PBID with outreach to property owners and business owners to first ascertain the level of support for a PBID and then to formulate a preliminary scope of PBID activities and services.

and prepare a preliminary estimate of special assessments on properties. Formation of a PBID is not included as part of this scope and budget.

- **Capital Improvement Program and Financing Plan.** BAE will prepare a Financing Plan for the Plan Area, which identifies federal, state, and local sources of funding, including Plan Area-specific impact fees. This task is described in Task 4 below.

Strategic Property Acquisition Revenue (“SPAR”) Fund

BAE will evaluate the portfolio of City-owned properties and estimate revenue generation potential, any required initial investment, and timing of potential revenue. It is assumed the City can provide an excel database of properties. Based upon its market analysis and work on the Specific Plan, BAE will evaluate the highest and best use for each property and how it aligns with existing permitted uses and/or proposed uses under the new Specific Plan. Using market data, as well as information from recently commissioned City appraisals (such as a recent one commissioned to set park fees), BAE will prepare a matrix that shows each property’s highest and best use, permitted uses, AB 1486 Surplus Public Lands Act applicability, potential value, potential lease income, and disposition strategy options to generate one-time or ongoing revenue that can flow to the SPAR fund. Cost to operate the SPAR fund will be formulated through conferring with City staff. As part of this optional task, BAE will prepare a draft and final technical memo with the data, analysis, and findings.

Economic/Scenario Feasibility Testing

BAE will conduct financial feasibility testing to evaluate the impact that various policy options would have on development feasibility. This financial feasibility testing could identify the extent to which new or updated policies or development standards could facilitate the production of affordable housing or the delivery of community benefits as part of new development projects.

Impact Fee Scoping Coordination

BAE and the Ascent team will work with the City to discuss the potential implementation of a Main Street/ Gateway District Impact Fee Program. As part of this task, we anticipate 1-2 meetings with a combination of the City’s project team, the Finance Director, and/or the City Manager to discuss considerations for the development of an impact fee, including a nexus study and associated order-of-magnitude costs estimates or other studies.

It is anticipated that impact fee considerations and scoping can also be addressed in City Council Study Session #6, Funding and Incentives, which has been

budgeted as part of Task 2.9. Following this task, the Ascent team will prepare a detailed approach and budget for the impact fee development and any associated studies that will be needed.

Mobility and Circulation

Fehr & Peers will perform the following tasks to support the development of the Plan mobility element:

- Prepare rough order of magnitude trip generation and VMT generation estimates to support consideration of up to three land use alternatives, to support the development of a preferred alternative.
- Develop a multi-modal network plan for the preferred alternative.
- In collaboration with the Ascent Team, develop complete street design concepts for up to five roadway cross-sections and five intersections, including a combination of cross-sections and plan views.
- Develop transportation policies and programs to support the goals of the Plan, including travel demand management policies to apply to existing and new development, parking rates, curbside management, and other key topics.
- As an optional task (**not included in budget**), Fehr & Peers can develop local circulator shuttle route options, building on the City’s past work and studies, including potential funding mechanisms (concept-level).

Public Realm Improvements, Placemaking, Branding

The Ascent urban design team will evaluate parks, pathways, and open space projects constructed to date, identifying remaining needs and further efforts to support preferred plan’s level of development intensity and placemaking objectives. Framework diagrams with accompanying strategies, design concepts, and imagery will be prepared for topics such as open space, public realm design, streetscape improvements, paseo connections to Main Street, placemaking, urban greening, wayfinding and signage, and district branding.

Optional Task (**not included in budget**): District Identity and Branding

As an optional task, Ascent and Studio J9 will advance the district branding to develop a branding program of customized graphics, signage, and wayfinding. The branding program can serve as a near-term implementation item to convey a sense of place, highlight the spirit of the community, and support marketing efforts for the Main Street/ Gateway Area.

We anticipate addressing the following, to be refined through our dialogue with the City, community, and stakeholders:

- ▶ Pedestrian and vehicular district identity and wayfinding components, to be coordinated by location, per a location plan
- ▶ Streetscape Banners (Base and Special Event)
- ▶ Seating, Street Furnishings, and Public Art
- ▶ Kiosks (Bus Shelters or Freestanding Sign Kiosks) and Pedestrian/Bike Connectivity Signs
- ▶ Special Signage Elements, such as Boundary Definition or Identification/Gateway Designation

TASK 3 DELIVERABLES

- ✓ Brainstorming Session Presentation Materials
- ✓ Draft Vision Memo
- ✓ Summary of Scenario Planning for 3 Development Framework Options
- ✓ Preferred Draft Plan and Strategies Summary for Economic Development and Retail; **SPAR Funding**, Mobility and Circulation; and Public Realm Improvements, Placemaking, and Branding.

Task 4: Specific Plan Drafting

To meet the City's desired timeline, the Ascent Team has proposed a streamlined process to for preparing the Specific Plan Update.

Although the effort has been described as an "Update", due to the length of time that has passed since the preparation of the Specific Plan, we understand that this will not be a surgical update. Our team will address changes to state law, as well as best practices for modernizing the specific plan regulations and objective design standards, and update the organization and format. We will work with the City to come up with the most streamlined approach, and confirm content, organization, and format, early in the process.

We will have developed the plan frameworks and core strategies within Task 3, including key imagery, graphics, and diagrams, and seeking input from the community, the TAC, and the Planning Commission. Task 4 will be focused on integrating the Task 3 deliverables into a coordinated Specific Plan Update document for review and feedback by City staff.

Task 4.1 Outline and Mock-Up

In conjunction with Phase 3, Ascent will prepare a document mock-up and annotated outline to describe the proposed structure for the Specific Plan document early in the process to confirm the structure and components of the document with city staff.

Task 4.2 Administrative Draft Plan

The Ascent Team will prepare an Administrative Draft Plan for review by City staff. The Plan will incorporate

goals, policies, and the findings and strategies from earlier plan phases. The Administrative Draft Plan will include the following information in a format to be confirmed under Task 4.1, consistent with state law/guidance for Specific Plans:

- ▶ **Introduction.** This chapter will provide an overview of the Plan Area, the history of past and ongoing planning efforts, the focus of the update, the organization of the Plan, and updates to the Plan Area boundaries. Additionally, a summary of the community engagement process, events, outcomes, and how that input has shaped the development of the Plan will be provided.
- ▶ **Vision and Goals.** This chapter will describe the vision and summarize guiding principles, provide an illustrative plan, and 3D imagery that tell the story of the vision for the evolution of the Plan Area.
- ▶ **Land Use and Zoning.** This chapter will provide a regulatory framework for land use and zoning, including housing, desired mix of uses, intensity (as well as available incentives for market rate and affordable housing), height, setbacks, and other development standards such as building frontages, and parking.
- ▶ **Mobility.** This chapter will provide the access, circulation, mobility, and transit framework, to facilitate movement within and through the area, including new streets and connections, complete streets improvements, shuttle services, and pedestrian and bikeway connections and improvements.
- ▶ **Public Realm Improvements.** This chapter will identify specific strategies to support more fine grain placemaking improvements within each of the Plan's focus areas, including open space, public realm, and streetscape improvements, potential paseo connections to Main Street, urban greening, wayfinding and signage, and district branding.
- ▶ **Infrastructure and Utilities.** This chapter will provide guidance for infrastructure and utilities improvements, including identifying enhancements, changes and additions to the Basic Infrastructure Program appropriate to and supportive of changes in the development scenario reflected in the Plan.
- ▶ **Implementation.** This chapter includes implementation actions, responsibilities, and associated timeframes to support public and private investment within the Plan Area, including agency action items, assessment districts, and/or impact fee development. It will also describe the process for subsequent project review and

streamlining, based on the Specific Plan EIR scope and analysis.

Note: A form-based approach may be taken incorporating Specific Plan zoning and design criteria, or the Specific Plan may refer to citywide zoning districts and citywide objective design standards. We will work with the city to confirm approach and coordinate based on the status of other city efforts.

Financing Strategy

BAE will identify potential funding sources for public improvements identified in the Plan Area (e.g., infrastructure and community facilities) and prepare a funding source matrix that identifies one or more potential funding sources for each category of improvements. BAE will also identify actions that the City should implement or coordinate to execute the financing strategy. For example, this may include, but shall not be limited to, actions such as adoption of a Plan Area public improvements fee; establishment of a financing district; establishing policies for reimbursement agreements for developers who install infrastructure that is more than necessary to serve their own properties, etc. Ascent and City staff will provide BAE with a listing of public improvements identified in the Plan, grouped by type of improvement (e.g., utilities, roads/complete streets, public facilities).

Mobility Element

Ascent, in coordination with Fehr & Peers, will prepare an Mobility Element that identifies the multimodal network plan and framework and presents the complete street design concepts for key corridors within the Plan Area. The multimodal network will be designed to coordinate with the City's Active Transportation Plan.

Public Infrastructure and Utilities

BKF will review any proposed changes to the plan boundary along with any proposed land use updates. They will assist with identifying any critical utility/roadway constraints and identify infrastructure improvements that should be anticipated based on change of land use or increased density.

BKF will provide exhibits for each system to be incorporated into the Specific Plan graphics. The analysis of each system will include infrastructure phasing for near-term development projections and longer-term (2040) Specific Plan horizons. BKF will provide order of magnitude cost for backbone infrastructure improvements per focus area.

Note: Formal modeling is not included in this proposal, and can be provided as an additional service.

Task 4.3 Revised Draft Plan

Ascent will prepare a second draft of the document that incorporates City comments. This version is assumed to be approximately 90 percent complete toward a public draft.

Task 4.4 Prepare Screencheck and Public Draft Plan

Ascent will prepare a Screencheck Public Draft for city review, prior to issuing the Public Draft Plan for public review and circulation. A small budget for minor revisions is assumed for corrections between the Screencheck and Public Draft.

TASK 4 DELIVERABLES

- ✓ Outline and Mock-Up
- ✓ Administrative Draft Plan (1 Draft)
- ✓ Revised Draft Plan (1 Draft)
- ✓ Screencheck Draft Plan (1 Draft)
- ✓ Public Draft Plan (1 Draft)

Task 5: Environmental Evaluation

As noted above, the City recently adopted a new General Plan that includes a Program EIR that provides an initial evaluation of the environmental effects of the establishment of the Specific Plan. Our approach will be to leverage the analysis in the General Plan EIR to streamline the preparation of this EIR to only focus on environmental issues that are peculiar to the Specific Plan, consistent with State CEQA Guidelines Section 15183.

Our approach would also include development of an environmental checklist for use on subsequent development applications to determine the appropriate exemption or environmental review streamlining process to be used consistent with State CEQA Guidelines Section 15168 and 15182.

5.1. Initiation of the Environmental Review

The Ascent environmental team will monitor development of the Specific Plan under Task 4 and will provide input on policy provisions that would improve environmental streamlining for subsequent development projects in the Specific Plan area. We will conduct a meeting with City staff to discuss the type of EIR to be prepared in relation to the General Plan EIR (e.g., Subsequent EIR or Supplemental EIR) as the Specific Plan is an implementation of the General Plan. We will also provide electronic form letters for tribal consultation as required under Senate Bill 18 and Assembly Bill 52 for the City to distribute.

5.2. Prepare Notice of Preparation and Scoping Meeting

Ascent will prepare an electronic draft in Word of the Notice of Preparation (NOP) for the Specific Plan that will summarize key environmental issues to be addressed in the EIR. Upon receiving comments on the draft NOP from the City, we will prepare the public version of the NOP for City distribution. We will submit the NOP to the State Clearinghouse electronically on behalf of the City with the Notice of Completion.

Ascent will participate in the NOP scoping meeting that will consist of preparation of a PowerPoint presentation and assistance in the presentation of the project and anticipated environmental issues at the meeting. Ascent will also take meeting notes and provide a summary of NOP and scoping meeting comments.

5.3. Administrative Draft EIR

Ascent will prepare an electronic version (in Word) of the Administrative Draft EIR, in accordance with CEQA and the State CEQA Guidelines. For those resources that would not be affected by the Specific Plan or were adequately addressed in the General Plan EIR, the EIR will provide the rationale as to why no impact would occur and note that the issue is not discussed further in the EIR. These environmental issue areas are anticipated to include, but are not limited to, the following:

- ▶ Agriculture and Forestry Resources
- ▶ Geology and Soils
- ▶ Hazards and Hazardous Materials
- ▶ Hydrology and Water Quality
- ▶ Mineral Resources
- ▶ Wildfires

The EIR will adhere to all CEQA requirements and is anticipated to focus on resource categories for which significant impacts could occur. The EIR will include the following chapters:

Introduction – The Introduction will describe the purpose of the EIR and will outline the EIR contents.

Executive Summary – The Executive Summary will provide an overview of the project, alternatives evaluated, areas of controversy and issues to be resolved, and project impacts and mitigation measures.

Project Description – The Project Description will provide a complete description of the Specific Plan, including anticipated infrastructure and transportation improvements and amendments to the City's General Plan (if required). Project objectives will also be identified.

Environmental Setting, Impacts, and Mitigation

Measures – Each environmental resource section will include a description of the environmental setting (i.e., the baseline environmental conditions), regulatory setting (i.e., federal, state, and local regulations), criteria used to determine the significance of impacts, analysis methodology and assumptions, and detailed discussion of the potential environmental effects of the project. Impact conclusions will be based on substantial evidence, and mitigation measures will be recommended for significant or potentially significant impacts. References will be provided as necessary to the supporting technical studies, which will be included as appendices to the EIR. The EIR will focus on the following environmental issues:

Aesthetics – The aesthetics analysis will evaluate how implementation of the Specific Plan could alter the visual character of the area. Included would be photo documentation and an analysis of anticipated changes in building height and massing as compared to existing conditions.

Air Quality – The air quality analysis will focus on project-specific construction and operational impacts as compared to the build-out analysis in the General Plan EIR. The analysis will review and utilize (as appropriate) the Bay Area Air Quality Management District's Thresholds of Significance under its CEQA Guidelines. The impact analysis will address whether the project would result in exacerbation of any existing toxic air contaminant concentrations that could result in greater health impacts than current conditions.

Biological Resources – The plan area is developed and lacks natural habitat conditions to support substantial plant and wildlife species. However, trees in the project area could be designated as protected under Section X-2-7.01 of the City Code of Ordinances as well as support special-status raptor and migratory bird species. The analysis will focus on existing habitat conditions in the project area and the potential for the project to impact special-status species.

Cultural and Tribal Cultural Resources – The project will trigger tribal consultation under Senate Bill 18 and Assembly Bill 52 regarding the potential to impact tribal cultural resources. The analysis will also consider whether any potentially significant historic structures may exist in the plan area.

Energy – The EIR will estimate existing energy demands (building and mobile) in the plan area and will identify changes in energy demand from development under the Specific Plan. The analysis will factor in any proposed energy efficiency or renewable energy use that is included in the updated Specific Plan. Impacts

will be assessed based on State CEQA Guidelines Appendix G, analyzing whether the project may result in wasteful, inefficient, or unnecessary consumption of energy or conflict with a plan for renewable energy or energy efficiency.

Greenhouse Gas and Climate Change – The greenhouse gas (GHG) analysis will quantify the GHG emissions of the project and identify the Specific Plan’s proposed GHG emission reduction measures. The analysis will also address the plan’s consistency with the City’s Climate Action Plan and the anticipated update to the CAP.

Land Use and Planning – The EIR will evaluate the Specific Plan’s compatibility with existing land uses and development patterns and evaluate the proposed plan’s consistency with other adopted City plans and policies. The analysis will identify whether the project would result in the physical division of an established community.

Noise – The noise analysis will evaluate potential noise and vibration impacts and will evaluate whether increases in traffic volumes would create new noise impacts not previously addressed in the General Plan EIR.

Population and Housing – The EIR will evaluate whether the Specific Plan would result in a substantial increase in population and employment (beyond the General Plan growth projections) and whether the project could displace residences.

Public Services – The analysis will evaluate whether implementation of the Specific Plan would create new public service demands (fire, law enforcement, parks, schools) that would require the construction of new facilities which could trigger environmental impacts.

Transportation–The EIR will summarize the results of the Specific Plan transportation analysis that will focus on changes in vehicle miles traveled, multimodal operations, transportation safety, and conflicts with pedestrian, bicycle, and transit services.

Fehr & Peers will conduct the transportation analysis for the Specific Plan EIR to provide traffic operations information to the City and an assessment of the Plan’s impacts with respect to the four CEQA Guidelines Appendix G Checklist criteria:

1. Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?
2. Conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?
3. Substantially increase hazards due to a geometric

design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?

4. Result in inadequate emergency access?

We will incorporate City General Plan policies and design requirements into the evaluation of criteria 1A, 3C and 4D. For Criteria 2B, we will conduct a baseline VMT screening, and prepare a more complete VMT analysis evaluating the direct, indirect and cumulative effects of the project using project generated VMT and boundary VMT within a specific geographic area (for example, Santa Clara County, or the nine-county Bay Area). The methodology and significance thresholds will be discussed with City staff prior to proceeding with this analysis, and will be consistent with the City’s VMT analysis methodology and thresholds (currently under development) to the extent they are applicable to this large, mixed-use development area.

As an optional task, Fehr & Peers will prepare a Local Transportation Analysis (LTA) to provide traffic operations information to VTA (in keeping with the VTA Transportation Impact Analysis Guidelines) For the LTA, we will provide the intersection, roadway, freeway analysis as indicated by the VTA Transportation Impact Analysis Guidelines. For purposes of budget preparation, it is assumed that up to 20 freeway segments, 10 ramps, and 10 intersections will be analyzed.

Fehr & Peers will also provide some assistance to the team in responding to transportation related public comments on the Draft EIR.

Utilities and Services – The results of the utility analysis prepared by BKF will be summarized. The analysis will address water, wastewater, and storm drainage infrastructure and whether any improvements would be required to support the additional development potential.

Other CEQA Sections – CEQA has very specific requirements for the contents of an EIR. Ascent will provide the City with a complete EIR, containing all sections required by CEQA, including the following:

- **Alternatives:** Up to three alternatives, including the no-project alternative, will be evaluated in the EIR. The alternatives will be analyzed at a comparative level of detail, less than that of the proposed project but sufficient to allow a comparison of impacts.
- **Significant Environmental Effects Which Cannot Be Avoided:** This section will clearly and

succinctly summarize significant and unavoidable environmental effects of the proposed project and alternatives as evaluated in the EIR.

- ▶ **Growth-Inducing Impacts of the Proposed Project:** This section will qualitatively evaluate the project's potential to induce growth and subsequent environmental impacts that would occur.
- ▶ **Significant Irreversible Environmental Changes:** This section will address environmental changes that would occur as a result of implementation of the updated Moffett Park Specific Plan.
- ▶ **Cumulative Impacts:** Ascent will evaluate the impacts of cumulative development and activities on all the resource issues evaluated in the EIR. Ascent will work closely with City staff to establish the cumulative setting, which involves identification of reasonably foreseeable projects and activities in the region and an accurate list of cumulative projects (proposed, approved, under construction).

The EIR will include visual aids, such as maps and diagrams, to clearly present the environmental analysis to decision-makers, responsible agencies, and the public. The executive summary will include a summary table of all impacts and mitigation measures identified in the EIR. An impact comparison table of the alternatives will also be provided.

As part of preparation of the Administrative Draft EIR, Ascent will compile an electronic copy of all cited literature, studies, personal communications, and reference materials used in the preparation of the EIR.

5.4. Public Draft EIR

Based on comments from City staff on the Administrative Draft EIR, Ascent will prepare a print-check Draft EIR in electronic form (in Word) for City review. This scope of work assumes that comments will not require analysis of new issues or substantially revised analysis of issues already addressed in the administrative draft.

Based on comments from City staff on the print-check Draft EIR, Ascent will prepare a public Draft EIR in electronic format (Word and PDF) for the City to release. This scope of work assumes that comments will not require analysis of new issues or substantially revised analysis of issues already addressed in the print-check document. We will also prepare the Notice of Availability and will submit the Draft EIR electronically to the State Clearinghouse on behalf of the City. We will also attend the public meeting to receive

comments on the Draft EIR.

5.5. Final EIR

Ascent will coordinate with City staff, who will assemble public and agency comments received on the Final EIR. Responses to these comments will be prepared and presented in a format to accompany the document. The responses are assumed to require only clarification and/or explanation of the conclusions in the Draft EIR without the need to revise analysis, elaborate substantially, or add new issues or alternatives. Ascent will provide an electronic version (in Word) of the administrative draft Final EIR for City review. Upon receiving comments on the administrative draft Final EIR from the City, Ascent will generate a print-check copy of the Final EIR in an electronic version (in Word) for final City review. We will revise the document and generate the Final EIR (Word and PDF) for City distribution.

5.6. CEQA Findings

In coordination with City staff, Ascent will prepare CEQA Findings of Fact (Findings) and, if necessary, a Statement of Overriding Considerations for the City's use. The Findings will specify mitigation measures incorporated into the project and will explain why other measures, if any, have been found to be infeasible. If applicable, the Findings will also identify feasible project alternatives that could reduce adverse environmental effects but are not being implemented, with an explanation as to why they are infeasible. Ascent will prepare an administrative draft of the Findings and will submit (electronically in Word) to the City for review and comment. Once comments are received, Ascent will incorporate comments and deliver an electronic file of the final Findings to the City.

5.7. Mitigation Monitoring and Reporting Program & Environmental Checklist for Subsequent Projects

A draft and final mitigation monitoring and reporting program (MMRP) will be prepared electronically (Word). The MMRP will include all mitigation measures in the EIR and will identify timing, responsible party, performance standards, etc. As part of this work effort, we will develop an Environmental Checklist template that can be used by City staff for streamlining environmental review or identification of exemptions for subsequent projects in the Specific Plan area. This checklist would be combined with the city's future CAP consistency checklist.

TASK 5 DELIVERABLES

- ✓ Notice of Preparation and Scoping Meeting Summaries
- ✓ Administrative Draft EIR

- ✓ Print Check and Public Draft EIR
- ✓ Administrative Draft Final, Print Check Final, and Final EIR
- ✓ CEQA Findings of Fact/Statement of Overriding Considerations
- ✓ Mitigation Monitoring and Reporting Program
- ✓ Environmental Checklist and CAP Consistency Checklist for Subsequent Projects

Task 6: Plan Adoption

Task 6.1: Support Planning Commission and City Council Hearings

The Ascent Team will provide support for the Planning Commission and City Council study adoption hearings. We will prepare a PowerPoint presentation for each meeting and be available to address questions from the Planning Commission or City Council. We assume city staff will prepare the staff reports and noticing for the meetings.

Task 6.2: Prepare Final Specific Plan

Ascent will prepare the Final Specific Plan, incorporating public and City comments following the public review process.

TASK 6 DELIVERABLES

- ✓ Commission and Council Materials (Up to 4)
- ✓ Final Specific Plan (1 Draft)

Task 7: Project Management and Team Meetings

Ascent will coordinate all aspects of the project to ensure that the schedule is achieved and high-quality products are delivered. Ascent will prepare and submit monthly invoices and progress reports. Ascent will facilitate biweekly project coordination meetings of conference calls.

Ascent assumes that the project will include regular project meetings, the majority of which will be conducted via Zoom or Microsoft Teams conference calls. We assume these meetings are conducted biweekly on average with some periods that may require less and other periods that may require more frequent communication. For the purposes of this assignment, we will assume up to 30 staff meetings/calls over the duration of the project, as well as additional time for project invoicing and general coordination. Ascent will provide brief summary notes with action items following each biweekly meeting or call.

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.

[PROJECT BUDGET DETAIL BEGINS ON FOLLOWING PAGE]

O. PROPOSED COMPENSATION (REVISED)

The proposed compensation price for the Main Street/Gateway Specific Plan Update is presented in the project budget that follows, including a detailed breakdown of rates, hours, and anticipated costs for each task and subconsultant. To promote clarity, budget assumptions are provided to explain the basis of the proposed price. The price is estimated based on a good-faith, current understanding of the project's needs.

Based on our understanding of the RFP, we have included scope for visioning, community engagement, scenario planning, a new Specific Plan Update document, and associated environmental analysis. The proposed budget totals **\$890,993** for labor for all of those components, of which **\$534,590** is for Ascent labor, and **\$356,403** is for subconsultant labor. Expenses totaling **\$39,715** have been identified. The total proposed compensation is **\$930,708** for all labor and expenses. **Additionally, a 5% contingency has been included, bringing the total proposed compensation for labor, expenses, and contingency to \$977,243.**

We have provided some optional tasks for the City to consider, based on our understanding of where the City may desire additional analysis. We are happy to work with the City to revise the scope of work and price, as warranted, to meet the City's expectations for the work program and level of effort.

Revised Project Budget

4/23/2021, Revised July 14, 2021

Task 1	Plan Boundaries, Data Gathering, and Assessments	Total Cost
1.1 Kick-off Meeting and Site Tour	\$	11,055
1.2 Material Review and Preliminary Mapping	\$	5,850
1.3 Existing Conditions Assessment (Memos)		
Land Use, Zoning, and Urban Form Analysis and Memo	\$	19,375
Market Analysis and Memo	\$	27,955
Affordable Housing and Community Benefits Analysis	\$	14,550
Transportation Analysis and Memo	\$	14,555
Public Infrastructure and Utilities Analysis and Memo	\$	11,815
Subtotal, Task 1	\$	105,155

Task 2	Public Outreach and Engagement	
2.1 Community Engagement Strategy	\$	5,550
2.2 Project Branding and Communication Materials	\$	9,320
2.3 Project Website	\$	2,760
2.4 Stakeholder Interviews	\$	6,340
2.5 Community Workshops (up to 2)		
Workshop 1: Host Community Listening/Vision Session	\$	14,310
Workshop 2: Alternatives	\$	13,740
Survey/ Interactive Web Activities	\$	5,970
2.6 Pop-Up Events (up to 2)	\$	11,015
2.7 Community Open House	\$	8,660
2.8 Meet with Technical Advisory Committee (up to 4)	\$	22,720
2.9 Support Planning Commission and City Council Study Sessions (up to 7)	\$	58,980
Subtotal, Task 2	\$	159,365

Task 3	Visioning, Scenarios, and Preferred Plan	
3.1 Initial Visioning	\$	18,668
3.2 Scenario Planning	\$	19,985
3.3 Preferred Draft Plan and Strategies for Incorporation into the Plan		
Land Use Updates, Urban Form, and Parking	\$	25,750
Economic Development and Retail Strategies	\$	39,830
Strategic Property Acquisition Revenue ("SPAR") Fund	\$	31,385
Economic/Scenario Feasibility Testing	\$	22,475
Impact Fee Scoping Coordination	\$	3,010
Mobility and Circulation	\$	42,575
Public Realm Improvements, Placemaking, and Branding	\$	22,800
Subtotal, Task 3	\$	226,478

Task 4	Specific Plan Drafting	
4.1 Outline and Mock-up	\$	3,580
4.2 Administrative Draft Plan	\$	96,807
4.3 Revised Draft Plan	\$	25,075
4.4 Screencheck and Public Draft Plan	\$	16,080
Subtotal, Task 4	\$	141,542

Task 5	Environmental Evaluation	
5.1 Initiation of the Environmental Review	\$	840
5.2 Notice of Preparation and Scoping Meeting	\$	4,900
5.3 Administrative Draft EIR	\$	131,520
5.4 Public Draft EIR	\$	23,600
5.5 Final EIR	\$	25,990
5.6 CEQA Findings	\$	4,740
5.7 MMRP and Environmental Checklist	\$	6,040
Subtotal, Task 5	\$	197,630

Task 6:	Plan Adoption	
6.1 Support Planning Commission and City Council Hearings (up to 4 meetings total)	\$	23,425
6.2 Prepare Final Specific Plan	\$	9,120
Subtotal, Task 6	\$	32,545

Task 7: Project Management	
Project Management, Bi-Weekly Calls	\$ 28,278
Subtotal, Project Management	\$ 28,278

TOTAL HOURS, Ascent and Subconsultants	5,235
Sub-total, Labor, Ascent and Subconsultants	\$ 890,993

REIMBURSABLE EXPENSES

The following tasks are reimbursable expenses anticipated for the project, and are contingent upon authorization of the client.

Expense	Cost
Subconsultant Direct Costs	\$ 9,395
Website Hosting and Digital Platforms	\$ 6,000
Printing and Reproduction	\$ 2,500
Mileage/ Parking/ Travel	\$ 4,000
Subconsultant Administrative Costs (5%)	\$ 17,820
TOTAL, Expenses	\$ 39,715
TOTAL, Labor + Reimbursable Expenses	\$ 930,708
5% Contingency	46,535
TOTAL, WITH CONTINGENCY	\$ 977,243

OPTIONAL TASKS

Task	Cost
1 Expanded District Identity and Branding	\$ 25,000
2 Local Transportation Analysis (VIA Compliance by F&P)	\$ 30,165
3 5 Intersection Counts Plus Supplemental Streetlight Data	\$ 4,000
4 Shuttle Route Planning	\$ 1,860

		Ascent																	
		Walters/Folks Contract Manager/ Advisor	Babla Project Director/ Project Manager	Thai Deputy PM	Lee Sr. Urban Designer	Gelbman Sr. Planner, Public Outreach	Reynoso/ Villaroel Urban Planner/ Designer	Payne Housing Policy Advisor	Kornfeld/Miller CAP/ Sustainability Coordinator	Angell ENV PD	Garcia Env. PM	Burrows Env. Planner	Fuller Biologist	Kornfeld CAP Adv	Antoniou Noise	Graphics	GIS	Admin/WP	
	hourly rate:	\$275	\$230	\$155	\$170	\$160	\$115	\$210	\$150	\$270	\$150	\$130	\$145	\$155	\$160	\$125	\$130	\$120	
Labor	Hours																		
\$ 4,520	24	4	4	8	6													2	
\$ 5,850	40		4	6			4	2									24		
\$ 19,375	121		18	25	40		36	2											
\$ 1,355	7	1	2	4															
\$ 1,760	8		4					4											
\$ 1,080	6		2	4															
\$ 1,080	6		2	4															
\$ 35,020	212	5	36	51	46	0	40	8	0	0	0	0	0	0	0	0	24	2	

Labor	Hours																	
\$ 3,150	18		4	2		12												
\$ 1,690	12		2	2			8											
\$ 2,760	20		4				16											
\$ 6,340	32	4	12	16														
\$ 7,050	46	2	8	12			16										8	
\$ 7,050	46	2	8	12			16										8	
\$ 230	1		1															
\$ 2,775	15		6	9														
\$ 5,590	34		8	8	8		10											
\$ 16,100	88	4	20	32	32													
\$ 45,750	264	14	70	40	40		80	10	10									
\$ 98,485	576	26	143	133	80	12	146	10	10	0	0	0	0	0	0	0	0	16

Labor	Hours																	
\$ 12,760	68	8	12	24	24													
\$ 19,985	111	2	24	25	44	16												
\$ 25,750	166		20	30	48		60	4	4									
\$ 460	2		2															
\$ 1,405	6	1	4					1										
\$ 6,435	33	1	12		20													
\$ 690	3		3															
\$ -	0																	
\$ 22,800	140		20		80		40											
\$ 90,285	529	12	97	79	216	16	100	5	4	0	0	0	0	0	0	0	0	0

Labor	Hours																	
\$ 3,580	20		4	4	12													
\$ 53,930	334	2	44	84	80	22	70	12										
\$ 19,870	128		20	24	24		54	6							10	10		
\$ 16,080	104		16	24	24		40											
\$ 93,460	586	2	84	136	140	22	164	18	0	0	0	0	0	0	0	10	10	0

Labor	Hours																	
\$ 840	4								2	2								
\$ 4,900	36								12	12	20					2	2	
\$ 105,120	700								30	170	200	24	160	80		12	24	
\$ 23,600	160								10	50	60	2	10	8		8	12	
\$ 25,990	172								16	70	40	2	4	6		2	32	
\$ 4,740	30								2	28								
\$ 6,040	46								4	40							2	
\$ 171,230	1148	0	0	0	0	0	0	0	60	336	360	28	174	94	0	24	72	

Labor	Hours																	
\$ 16,520	88	4	32	52														
\$ 9,120	60		8	16	12		24											
\$ 25,640	148	4	40	68	12	0	24	0	0	0	0	0	0	0	0	0	0	0

Labor	Hours																	
\$ 20,470	108	2	36	48				5		5	12							
\$ 20,470	108	2	36	48	0	0	0	5	0	5	12	0	0	0	0	0	0	0

	3,307	51	436	515	496	50	474	46	14	65	348	360	28	174	94	10	58	90
\$ 534,590		\$ 14,025	\$ 100,280	\$ 79,825	\$ 83,980	\$ 8,000	\$ 54,510	\$ 9,660	\$ 2,100	\$ 17,550	\$ 52,200	\$ 46,800	\$ 4,060	\$ 26,970	\$ 15,040	\$ 1,250	\$ 7,540	\$ 10,800

Cost																		
\$ -																		
\$ 6,000																		
\$ 2,500																		
\$ 4,000																		
\$ 17,820																		
\$ 30,320	0	0	0	0	0	0				0	0	0	0	0	0	0	0	0

Subconsultants Summary (See next page for detail)					
BAE	Greensfelder	Fehr & Peers	BKF	Plan to Place	Studio J9
\$ 945	\$ 1,530	\$ 1,170	\$ 2,890		
\$ 26,600	\$ -				
\$ 12,790					
		\$ 13,475			
		\$ 10,735			
\$ 39,390	\$ 945	\$ 15,005	\$ 11,905	\$ 2,890	\$ -

				\$ 2,400	
				\$ 4,030	\$ 3,600
\$ 1,620			\$ 5,640		
	\$ 1,050		\$ 5,640		
			\$ 5,740		
			\$ 8,240		
			\$ 3,070		
\$ 3,480	\$ -	\$ 3,140			
\$ 6,960	\$ 1,890	\$ 4,380			
\$ 12,060	\$ 1,890	\$ 8,570	\$ -	\$ 34,760	\$ 3,600

\$ 2,320	\$ 945	\$ 2,645			
\$ 28,030	\$ 11,340				
\$ 29,980					
\$ 16,040					
\$ 2,320					
		\$ 42,575			
\$ 78,690	\$ 12,285	\$ 45,218	\$ -	\$ -	\$ -

\$ 10,620	\$ 3,150	\$ 7,715	\$ 21,392		
		\$ 5,205			
\$ 10,620	\$ 3,150	\$ 12,920	\$ 21,392	\$ -	\$ -

		\$ 26,400			
\$ -	\$ -	\$ 26,400	\$ -	\$ -	\$ -

\$ 3,480	\$ 945	\$ 2,480			
\$ 3,480	\$ 945	\$ 2,480			

		\$ 3,710	\$ 1,608	\$ 2,490	
\$ -	\$ -	\$ 3,710	\$ 1,608	\$ 2,490	\$ -

Revised Project Budget (Subconsultant Detail)

4/23/2021, Revised July 14, 2021

hourly rate:

Task 1	Task Boundaries, Data Gathering, and Assessments	Labor	Hours
1.1	Kick-off Meeting and Site Tour	\$ 6,535	33
1.2	Material Review and Preliminary Mapping	\$ -	0
1.3	Existing Conditions Assessment		
	Land Use, Zoning, and Urban Form Analysis	\$ -	0
	Market Analysis	\$ 26,600	146
	Affordable Housing and Community Benefits Analysis	\$ 12,790	88
	Transportation Analysis and Memo	\$ 13,475	91
	Public Infrastructure and Utilities Analysis and Memo	\$ 10,735	63
	Subtotal, Task 1	\$ 70,135	401

BAE				Greensfelder	Fehr & Peers					BKF			Plan to Place			J9
Shiver	Hagor	Guerrero	Vu	Greensfelder												
Principal in Charge	Project Manager	Technical Lead	Analytical Support	Principal in Charge	AIC	Project Manager	Senior Staff (Forecasting, Design)	Engineer/ Planner	Graphics/ Admin.	Assoc	Eng/Sur III	Eng/Sur I	Javid	Krosner	Sharkland	Project Manager
\$310	\$270	\$195	\$100	\$315	\$270	\$175	\$220	\$145	\$135	\$219	\$183	\$140	\$250	\$165	\$150	\$150
				3	2	4		2		2	4		4	6	6	
12	20	64	50													
2	16	30	20													
					2	8		60	21	9	28	26				
14	36	94	70	3	4	12	0	62	21	11	32	26	4	6	6	0

Task 2	Public Outreach and Engagement	Labor	Hours
2.1	Community Engagement Strategy	\$ 2,400	13
2.2	Project Branding and Communication Materials	\$ 7,630	47
2.3	Project Website	\$ -	0
2.4	Stakeholder Interviews	\$ -	0
2.5	Community Workshops (up to 2)		
	Workshop 1: Host Community Listening/Vision Session	\$ 7,260	36
	Workshop 2: Alternatives	\$ 6,690	36
	Survey/ Interactive Web Activities	\$ 5,740	32
2.6	Pop-Up Events (up to 2)	\$ 8,240	48
2.7	Community Open House	\$ 3,070	17
2.8	Meet with Technical Advisory Committee (up to 2 each for B&E and F&P)	\$ 6,620	32
2.9	Support Planning Commission and City Council Study Sessions (up to 4 each for B&E and F&P)	\$ 13,230	58
	Subtotal, Task 2	\$ 60,880	319

													3	10		
													4	12	7	24.0
	6					6							9	16	5	
													9	16	5	
													7	16	9	
													8	16	24	
6	6					8		12					4	8	5	
12	12			6		12		12	4							
18	24	0	0	6	0	26	0	24	4	0	0	0	44	94	55	24.0

Task 3	Visioning, Scenarios, and Preferred Plan	Labor	Hours
	3.1 Initial Visioning	\$ 5,908	25.5
	3.2 Scenario Planning	\$ -	0
	3.3 Preferred Draft Plan and Strategies for Incorporation into the Plan	\$ -	0
	Land Use Updates, Urban Form, and Parking	\$ -	0
	Economic Development and Retail Strategies	\$ 39,370	180
	Strategic Property Acquisition Revenue ("SPAR") Fund	\$ 29,980	154
	(Economic) Feasibility Testing	\$ 16,040	80
	Impact Fee Scoping Coordination	\$ 2,320	8
	Mobility and Circulation	\$ 42,575	261
	Public Realm Improvements, Placemaking, and Branding (Note: optional task not included)	\$ -	0
	Subtotal, Task 3	\$ 136,193	709

4	4			3	3	6		4	1.5							
30	4	70	40	36												
30	4	80	40													
4	20	40	16													
4	4															
					20	36	24	116	65							
72	36	190	96	39	23	42	24	120	66.5	0	0	0	0	0	0	0

Task 4	Specific Plan Drafting	Labor	Hours
	4.1 Outline and Mock-up	\$ -	0
	4.2 Administrative Draft Plan	\$ 42,877	237
	4.3 Revised Draft Plan	\$ 5,205	33
	4.4 Screencheck and Public Draft Plan	\$ -	0
	Subtotal, Task 4	\$ 48,082	270

4	10	24	20	10	4	8		24	13	32	48	40				
					2	8		16	7							
4	10	24	20	10	6	16	0	40	20	32	48	40	0	0	0	0

Task 5	Environmental Evaluation	Labor	Hours
	5.1 Initiation of the Environmental Review	\$ -	0
	5.2 Notice of Preparation and Scoping Meeting	\$ -	0
	5.3 Administrative Draft EIR	\$ 26,400	162
	5.4 Public Draft EIR	\$ -	0
	5.5 Final EIR	\$ -	0
	5.6 CEQA Findings	\$ -	0
	5.7 MMRP and Environmental Checklist	\$ -	0
	Subtotal, Task 5	\$ 26,400	162

					6	40	16	76	24							
0	0	0	0	0	6	40	16	76	24	0	0	0	0	0	0	0

Task 6: Plan Adoption		Labor	Hours
6.1	Support Planning Commission and City Council Hearings (up to 2 each for BAE and F&P)	\$ 5,960	24
6.2	Prepare Final Specific Plan	\$ -	0
Subtotal, Task 6		\$ 5,960	24

[illegible]

Task 7: Project Management	Labor	Hours
Project Management, Bi-Weekly Calls	\$ 8,753	41
Subtotal, Project Management	\$ 8,753	41

				3	4	10	4			4	4		6	6		
0	0	0	0	3	4	10	4	0	0	4	4	0	6	6	0	0

TOTAL HOURS, Subconsultants		1,926
Sub-total, Subconsultants	\$ 356,403	

114	112	308	186	61	47	154	44	322	136	47	84	66	54	106	61	24
\$ 35,340	\$ 30,240	\$ 60,060	\$ 18,600	\$ 19,215	\$ 12,690	\$ 26,950	\$ 9,680	\$ 46,690	\$ 18,293	\$ 10,293	\$ 15,372	\$ 9,240	\$ 13,500	\$ 17,490	\$ 9,150	\$ 3,600

REIMBURSABLE EXPENSES

The following tasks are reimbursable expenses anticipated for the project, and are contingent upon authorization of the client

Expense	Cost
Subconsultant Direct Costs	\$ 9,395
Data, Website Hosting, and Digital Platforms	\$ -
Printing and Reproduction	\$ -
Mileage/ Parking/ Travel	\$ -
Subconsultant Administrative Costs (5%)	\$ -
TOTAL, Expenses	\$ 9,395
TOTAL, Subconsultant Labor + Reimbursable Expenses	\$ 365,798

[illegible]

Budget Assumptions

1. **Scope of Services.** The price is based on the proposed scope of services. If new technical issues, alternatives, field surveys, modeling, or analysis is identified after contract execution, we will work with the City to discuss a scope and budget amendment.
2. **Adequacy of Provided Materials.** Materials provided by the City are assumed to be complete and adequate for use in the analysis. If supplemental or revised analysis, studies, data, or fieldwork is needed to render such materials adequate, a budget amendment would be warranted.
3. **Schedule.** The price is based on the proposed schedule. If the schedule is protracted significantly (more than 60 days) for reasons beyond Ascent's control, a budget amendment may apply to the remaining work. Ascent will consult with the City about a course of action.
4. **Billing Rates, Pricing, and Staff Allocation.** The proposed budget has been allocated to tasks. Ascent may reallocate budget or non-key staff among tasks, as needed, as long as the total contract price is not exceeded. The price proposed to carry out the scope of work is valid for 120 days from the date of submittal, after which it may be subject to revision. The proposed billing rates apply to the duration of the contract, assuming an 18-month schedule.
5. **Subcontractor Administrative Cost.** Administrative cost of 5 percent will be applied to subcontractor prices for purposes of contract execution and management, invoicing, and payment processing.
6. **Meetings and Conference Calls.** Budget is assumed for proposed meetings and conference calls are specified. If exceeded, a budget augmentation would be warranted.
7. **Changes to the Project or Alternatives.** If the descriptions of the project and alternatives are changed after they have been approved for use in the Specific Plan and CEQA document by the City, a budget amendment will be warranted to the extent completed work needs to be revised or redone.
8. **Tribal Consultation.** Whether a tribe or tribes will request consultation under Assembly Bill 52 (Statutes of 2014) is unknown. The scope and budget, therefore, do not include performance of this consultation. Consultation assistance can be added, if needed, with a scope and budget amendment.
9. **Draft Review Cycles.** Draft review cycles are specified in the scope of work. City staff will provide Ascent with one consolidated set of reconciled, non-conflicting comments on preliminary drafts and all Specific Plan and EIR drafts.
10. **Responses to Public Comments.** After public review of the draft documents, Ascent will prepare a list of commenters; compile, organize, review, and evaluate comments; and coordinate with City staff to develop response strategies. Budget has been allocated for preparing responses to comments. If the number or complexity of comments requires a greater level of effort, Ascent and City staff will coordinate on a course of action and budget augmentation, if needed.
11. **References Cited.** Ascent will maintain electronic copies of cited references and provide electronic files during public review. Ascent will submit electronic copies of all references to the City for archiving upon completion of the scope of work.
12. **Reproduction Costs.** The reproduction cost of documents is included in the price, based on assumptions regarding the number of copies, document length, and extent of color graphics. If the number of copies, document length, or extent of color content exceeds assumptions, a budget augmentation would be warranted.
13. **Final Environmental Document.** The final environmental document will consist of a comments and responses to comments volume or chapter. Text revisions to the draft document, if needed, will be assembled in a section. Modification, redline/strike-through, and reproduction of the draft document are not included but can be provided with a budget amendment.
14. **Completion of Work.** The scope of work is complete upon the acceptance by City staff of the final deliverable.
15. **Litigation Support.** Ascent is available to assist in the lead agency's response to a lawsuit, subject to a contract amendment. Except for electronic files of cited references, assembly of an administrative record or project record is not included but can be provided with a budget augmentation.

EXHIBIT C
Activity Schedule

[PROJECT TIMELINE BEGINS ON FOLLOWING PAGE]

Revised Project Timeline

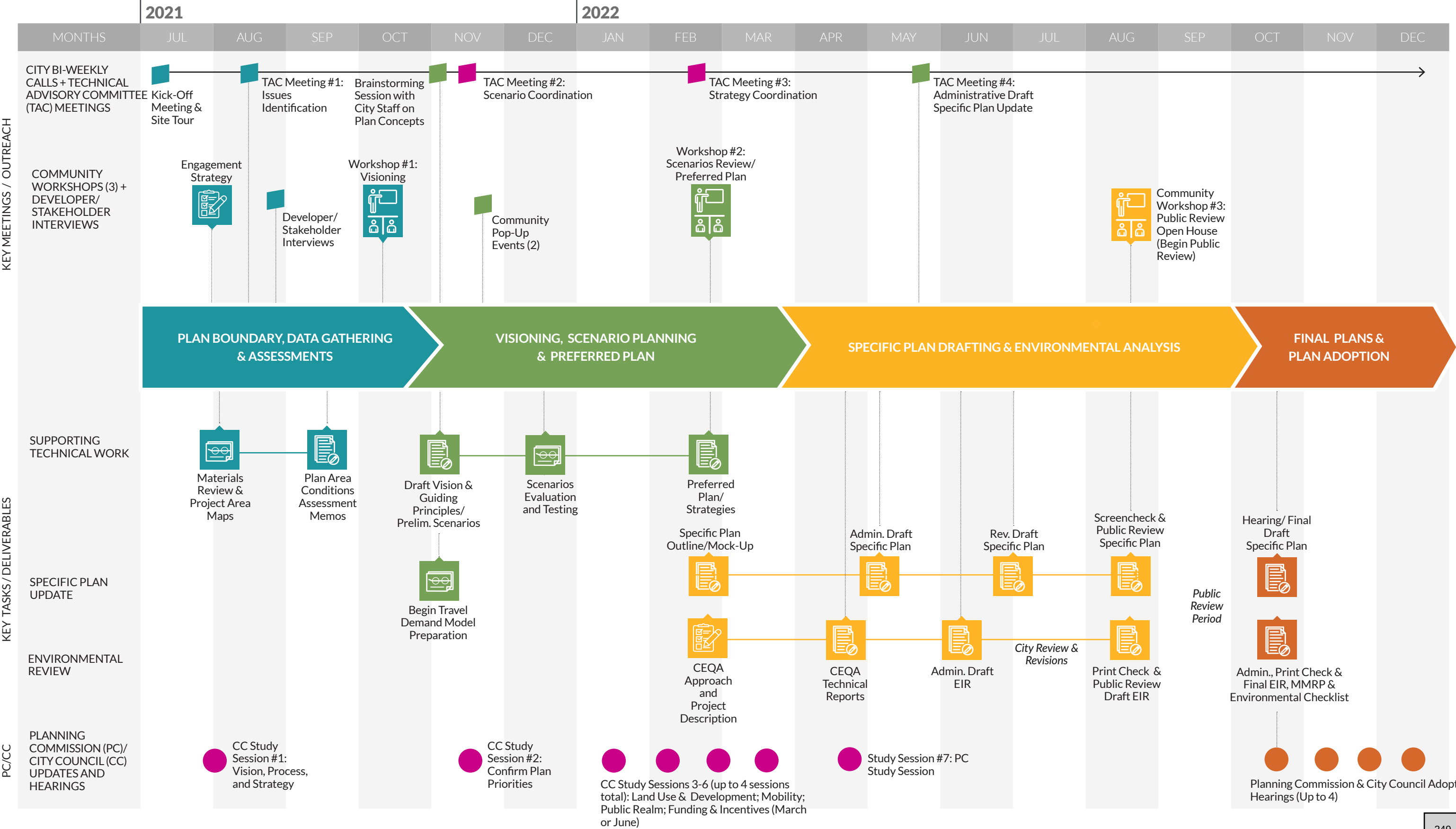


EXHIBIT “D”

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.

 X 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:

X 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.

X 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-:VIII, 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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve First Amendment to City Manager Employment Agreement with Steven McHarris
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/21/2021
Staff Contact:	Christopher J. Diaz, City Attorney 408-586-3040
Recommendation:	Approve First Amendment to City Manager Employment Agreement with Steven McHarris

Background:

On May 23, 2020, the City entered into an Employment Agreement with Mr. McHarris to serve as City Manager for the City of Milpitas on a permanent basis. On June 22, 2021, the City Council conducted a performance evaluation of the City Manager and determined that it would be appropriate to extend the term of the agreement by an additional year. Staff has prepared the proposed First Amendment to the Employment Agreement and it is now ready for City Council approval.

Analysis:

The First Amendment to the Employment Agreement between the City and Mr. McHarris provides for the following:

- **Term:** The term of the agreement is extended by one year and shall run through June 3, 2023, unless terminated earlier by either party in accordance with the terms of the agreement. The City Council has the option of extending the agreement on an annual basis.

All other provisions of the agreement remain the same and shall continue to be in effect.

Policy Alternatives:

Alternative 1: The City Council could choose not to approve the First Amendment to the Employment Agreement or seek modifications to the agreement.

Pros: None. If further modifications are desired, the City Council can provide that direction.

Cons: If the City Council does not approve the First Amendment to the Employment Agreement, then the Council will need to provide additional direction to staff.

Reason not recommended: The City Council should approve the First Amendment to the Employment Agreement as it is consistent with the City's Council's decision to extend the agreement by an additional year. If minor changes are desired, staff will take that direction.

Fiscal Impact:

Under the proposed one-year extension, for fiscal year 2022-2023, the total cost with a salary of \$334,376 plus benefits is \$501,803. Both amounts include total compensation, auto allowance, 401(a) plan, 457 deferred compensation plan, CalPERS cost, Medicare, Medical, Dental Vision, Short Term Disability, Long Term Disability and Life Insurance. The associated costs will be included in the FY 2022-23 Proposed Budget submission for Council approval.

California Environmental Quality Act: N/A

Recommendation:

Approve First Amendment to City Manager Employment Agreement with Steven McHarris.

Attachments:

1. First Amendment to Employment Agreement
2. City Manager Agreement

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT (the “Amendment”) is made and entered into as of August __, 2021 by and between the City of Milpitas, a municipal corporation (the “City”), and Steven McHarris (the “City Manager” or “Employee”). City and Employee may be individually referred to as “Party” and collectively referred to as the “Parties.”

RECITALS

- A. On May 23, 2020, the City entered into an Employment Agreement with Steven McHarris to serve as City Manager for the City of Milpitas (the “Agreement”).
- B. In accordance with the terms of the Agreement, on June 22, 2021, the City Council conducted a performance evaluation of the City Manager and determined that it would be appropriate to extend the term of the Agreement by an additional year.
- C. This Amendment is also authorized pursuant to Section 15(c) of the Agreement.

AGREEMENT

BASED UPON THE FOREGOING, THE PARTIES AGREE AS FOLLOWS:

Section 1. Section 4 of the Agreement is amended to read as follows:

“**4. Term.** The term of this Agreement shall be from the Effective Date through June 3, 2023 unless terminated earlier by either party in accordance with the provisions set forth in Section 12, or unless extended as authorized by this Section. The City Council shall meet annually on or around each anniversary of the Effective Date to consider an annual extension to the Agreement.”

Section 2. Except as expressly modified by this Amendment, all provisions of the Agreement remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF MILPITAS

By: _____
Rich Tran, Mayor

EMPLOYEE

By: _____
Steven McHarris

Approved as to Form:

Christopher J. Diaz, City Attorney

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Milpitas, a municipal corporation (the “City” or “Employer”) and Steven McHarris (“Employee”). It is effective on the latest date next to the signatures on the last page (“the Effective Date”).

This Agreement is entered into on the basis of the following facts, among others:

- A. The City desires to employ the qualified professional services of Employee as City Manager of the City, as provided by the Milpitas Municipal Code.
- B. After serving the City of Milpitas as Deputy City Manager followed by the June 4, 2019 appointment to Interim City Manager for the City of Milpitas, Employee desires to continue employment by the City as its City Manager.
- C. The City Council and Employee desire to establish a reasonable, professional and trustworthy employment relationship, subject to the terms and conditions set forth in this Agreement pertaining to compensation and benefits, performance evaluations, and related matters.

BASED UPON THE FOREGOING, THE CITY AND EMPLOYEE AGREE AS
FOLLOWS:

1. **Employee Appointed.** The City appoints and employs Employee as City Manager, and Employee continues to accept the appointment and employment as of the Effective Date.

2. **Duties of Employee.** Employee shall perform the duties established for the City Manager by State law, the Milpitas Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation. The provisions of the Municipal Code pertaining to the City Manager and the City Manager job

description, as may be amended from time to time, are attached hereto as Exhibit A and are hereby made a part of this Agreement.

(a) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to the City's business and affairs. Prior to undertaking any secondary activities for which Employee receives compensation, Employee shall disclose those activities to the Council.

(b) No Conflict. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Milpitas.

(c) Outside Activities. Consistent with subdivision 2(a) above, the Employee's primary employment is with the City. Any outside activities for which the Employee receives compensation from a third party shall be disclosed, in advance, to the City Council. Employee is expected to take personal leave (i.e., vacation time) for any outside activities of this nature.

3. Hours of Work. The City Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be reasonably available to the City Council with support and coverage by the

Assistant or Deputy City Manager at all times. It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the city's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

4. **Term.** The term of this Agreement shall be from the Effective Date through June 3, 2022 unless terminated earlier by either party in accordance with the provisions set forth in Section 12, or unless extended as authorized by this Section. The City Council shall meet annually on or around each anniversary of the Effective Date to consider an annual extension to the Agreement.

5. **City Council Commitments.** The City Council shall abide by all provisions of the City's Municipal Code regarding the administration of personnel issues, with a copy of the relevant provisions of the City's Municipal Code, as may be amended from time to time, attached hereto as Exhibit A.

6. **Annual Evaluation.** In the first year of the term of this Agreement, the City Council shall conduct an evaluation of Employee's performance within 60 days to establish working relationships, norms, opportunities to be successful, and goals for coming year, then followed on a six-month basis for the first year of agreement. The second six-month evaluation shall be conducted within 60 days of the Employee's anniversary date as the City Manager. Each year thereafter, within 60 days of the Employee's anniversary date as the City Manager, the City Council shall conduct an evaluation of Employee's performance and provide guidance and direction in accordance with the specific criteria developed by the City Council in consultation with a professional facilitator. The facilitator shall be selected by mutual collaboration between the City Council and Employee which collaboration shall also establish a mutually agreed upon

evaluation process. At the time of Employee's annual performance evaluation, Employee may be eligible to receive an increase in Base Salary, as determined by the City Council in its sole discretion. Employee may be eligible for the first increase on Employee's first anniversary date, and then annually dependent on a performance evaluation to precede any consideration of a salary adjustment. Employee is not automatically entitled to any increase, which is subject to the sole discretion of the Council. In addition to an established annual evaluation, the Council has the discretion to provide Employee with an evaluation of performance at other times chosen by the Council.

7. Compensation.

(a) Base Salary. Employee shall receive the annual Base Salary of Three Hundred Thirty Four Thousand Three Hundred Sixty-Seven Dollars and Thirty-Five Cents (\$334,367.35), payable on a pro-rata basis in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings.

(b) COLA Adjustments/Compaction. Whenever a cost of living adjustment or other non-merit based salary increase is provided to other miscellaneous unrepresented executive staff, the City Council shall consider whether it is reasonable and appropriate to grant the highest cost of living increase received by any miscellaneous unrepresented employee groups to the Employee's Base Salary to avoid compaction and maintain a buffer of 10% minimum between the Employee's Base Salary and the next highest salary for miscellaneous unrepresented executive staff. No salary adjustment is guaranteed, but is subject to the discretion of the City Council. Employee shall be obligated to inform the Employer whenever a recommended cost of living increase provided to other miscellaneous unrepresented executive staff will cause a potential compaction issue so that the Employer can determine whether a cost of living increase is appropriate for other miscellaneous unrepresented executive staff.

(c) Reduction in Salary or Benefits. If the City reduces the Employee's Base Salary, or any benefit described in Sections 8 to 11 of this Agreement, in a percentage that is greater than the average reduction of all miscellaneous unrepresented executive staff, such action shall constitute a termination of this Agreement without Cause under Section 12 of this Agreement.

8. Regular Benefits and Allowances. Employer agrees to provide and pay the City allowance for vision, dental and comprehensive medical health insurance for Employee and his/her dependents, if any, equal to that which is provided to all other full-time miscellaneous unrepresented executive staff of Employer. The City contribution toward health insurance shall be equal to that which is provided to all other miscellaneous unrepresented executive staff of Employer as specified in the applicable Unrepresented Employee Benefit Handbook ("Benefit Handbook"), dated July 1, 2019, or any amendment thereto or replacement thereof. Similarly, Employee shall receive short term and long term disability insurance coverage while this Agreement is in force, subject to any contributions required of unrepresented miscellaneous unrepresented executive staff.

9. Additional Deferred Compensation. As part of Employee's annual base compensation, City agrees to provide a Section 457 deferred compensation program which will be administered by the International City Management Association – Retirement Corporation (ICMA-RC), and to pay into such program for Manager's benefit monthly, commencing with the Effective Date of this Agreement, five (5) percent of annual base compensation subject to any limitations on annual contributions. In addition, the City shall adopt a qualified 401(a) defined contribution plan offered through ICMA-RC Corporation for the Employee to which the City shall contribute the equivalent of five (5) percent of annual base compensation, distributed

evenly on a monthly basis, commencing with the Effective Date of this Agreement. These contributions shall not be reportable to CalPERS.

10. Retirement Benefits.

(a) Employer agrees to enroll Employee into the California Public Employees Retirement System (“CalPERS”) consistent with other City employees.

11. Additional Benefits and Allowances. In addition to the benefits already specified in this Agreement, Employee shall receive the same benefits afforded to miscellaneous unrepresented executive staff, including and not limited to:

(a) Vacation; Sick Leave

(i) Vacation. Employee shall accrue and be eligible to use vacation days in accordance with the City’s established vacation policy.

(ii) Sick Leave. Employee shall be entitled to use and accrue sick leave in accordance with established City policy.

(b) Automobile. Employee shall receive a monthly vehicle allowance of five hundred fifty dollars (\$550.00) per month, for automobile trips which shall be equal to that which is provided to all other miscellaneous unrepresented executive staff of Employer as specified in the applicable Unrepresented Employee Benefit Handbook (“Benefit Handbook”), dated July 1, 2019, or any amendment thereto or replacement thereof.

(c) Professional Development. Employer expects the Employee to continue to develop the professional technical and leadership skills and knowledge necessary to serve as City Manager. To that end, Employee is expected to continue membership with the International City Managers Association, American Planning Association/American Institute of Certified Planners, and attend the Harvard Kennedy School State and Local Government 3-week executive leadership summer program upon notification of acceptance by Harvard (but all subject

to the City Council's budget approval). Employee is expected to attend national, state or local regular conferences, trainings and other educational opportunities to continue to hone the skills consistent with the City Manager job description. The City will allow Employee reasonable time away to participate in these professional development opportunities and Employer shall pay for these training opportunities as provided for in this subsection subject to City Council's budget approval.

(d) Executive Coaching. Subject to City Council review and approval, Employee shall obtain a professional executive coach, who can provide professional advice, mentorship, guidance, and training to the Employee within three (3) months of the Effective Date of this Agreement. All costs of the executive coach shall be budgeted and paid by Employer. When seeking approval, Employee shall disclose all costs associated with executive coaching.

12. Termination of Employment.

(a) No Property Interest/Cause Defined. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as City Manager. Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without Cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. As used in this Agreement, Cause shall only mean any of the following:

(i) Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Employee's reputation;

(ii) Proven failure of the Employee to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;

(iii) Conviction of any crime involving an “abuse of office or position,” as that term is defined in Government Code Section 53243.4;

(iv) Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act compliant meeting; and

(v) Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates the City’s properly-established rules or procedures.

(b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for Cause, will be made within ninety (90) days before a City Council election or within six (6) months immediately following a City Council election. Nothing in this subsection alters the “at will” status of Employee’s employment with City.

(c) Notice Required Of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days notice.

(d) Severance Pay. If Employee is asked to resign or is terminated without Cause, then Employee shall be eligible to receive a cash payment equivalent to the sum of Employee’s then-current monthly salary multiplied by nine (9) and the cash value, as determined by the City, of Employee’s monthly non-salary COBRA-eligible benefits multiplied by nine (9). Any severance and benefits paid shall be subject to state law requirements codified at Government

Code Section 53260. This cash payment will be made on a pro-rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Employee shall also be paid for any accrued, but unused, vacation. In the event of termination or resignation from employment or the non-renewal of this Agreement, sick leave upon termination shall be treated in accordance with the Benefit Handbook. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City, and (ii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within two (2) business days of accepting employment elsewhere, and the City's obligation to pay any severance benefit to Employee shall terminate upon Employee's acceptance of such alternative employment.

(e) Ineligibility for Severance under Certain Conditions. If the termination of Employee is for Cause (as defined above) or if Employee voluntarily resigns, Employee is not eligible for and will not receive any severance. If Employee is terminated without Cause, then Section 7(d) above shall control.

(f) Communications Upon Termination. In the event the Employer terminates the Employee for any reason or no reason, the Employer and Employee agree to undertake reasonable efforts to issue a joint press release or statement, the content of which is mutually agreeable to the Employer and Employee. The joint press release or statement shall not contain any text or information that is reasonably considered to be disparaging to either party. For purposes of this subdivision only, "party" includes City Council members in office at the time of termination and miscellaneous unrepresented executive employees. If the parties are able to agree on a joint statement, either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

13. Statutory Requirements. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as it may be amended or renumbered.

14. Payment of Expenses of Employment. The City shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the City Manager.

(b) Subject to Section 12 of this Agreement, the cost to defend and indemnify Employee as required by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Subject to budget approval, the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional memberships and seminars, etc.) necessary for the proper discharge of Employee's duties. The City will not reimburse Employee for any expenses related to membership in service clubs, and will not encourage or require service club membership.

15. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

- (i) served personally; or
- (ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or

- (iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or
- (iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City of Milpitas
Attn: Mayor
455 E. Calaveras Blvd.
Milpitas, CA 95035

EMPLOYEE:

Steven McHarris

(b) Compliance with Government Code §§53243, 53243.1, & 53243.2.

If Employee is convicted of a crime involving an abuse of the Employee's office or position, all of the following shall apply:

- (i) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse the City for such amounts paid;
- (ii) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Employee shall be required to fully reimburse City such amounts paid; and

(iii) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City or void if not yet paid to Employee.

(iv) For this subsection, “abuse of office or position” means either (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (2) a crime against public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

(c) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(d) Attorney's Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to recover his or its attorneys’ fees and costs. Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution.

(e) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of that severability would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(f) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(g) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

(h) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and City agree that venue for any dispute shall be in Santa Clara County, California.

(i) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(j) No Assignment. Employee may not assign this Agreement in whole or in part.

Dated: May-22-2020

CITY OF MILPITAS

DocuSigned by:
By [Signature]
17D48E7AB1EF4B... Mayor

Dated: May-23-2020

EMPLOYEE

DocuSigned by:
Steve McTarnis
80C06400328A4D8... Employee

Approved as to Form:

DocuSigned by:
Chris Diaz
9B363A8E314C46E... City Attorney



CITY MANAGER

City of Milpitas

Effective: June 1985
 Revised: February 2018
 EEOC: Officials/
 Administrators
 FLSA: Exempt
 Unit: Unrepresented

DEFINITION

To serve as the chief executive officer, responsible to the Mayor and Council for the proper administration of all affairs of the City. Under policy direction, to coordinate City services and activities among City departments and with outside agencies; and to provide highly responsible and complex administrative support to the City Council.

SUPERVISION RECEIVED AND EXERCISED

- Receives policy direction from the City Council.
- Exercises direct and indirect supervision over department heads and staff.

EXAMPLES OF DUTIES - Duties may include, but are not limited to, the following:

- Coordinate the general activities and operation of the City government.
- Direct and participate in the development and implementation of goals, objectives, policies, and procedures.
- Attend all meetings of the City Council unless otherwise excused.
- Direct and participate in, with department head cooperation, the preparation and administration of the City budget.
- Prepare long term plans of capital improvements including financing plans.
- Plan, coordinate, and direct the work of the City departments.
- Confer with department heads concerning administrative and operational issues, work plans, and strategic plans; assess operational needs; make appropriate decisions and recommendations.
- Establish general administrative goals and objectives for the City and directs the preparation of related plans and procedures.
- Prepare and propose the annual budget, providing for a balancing of revenues and expenditures; keep City Council advised of financial conditions, program progress, and present and future needs of the City.
- Respond to City Council inquiries regarding matters related to the City and ensure that council directives are carried out.
- Meet with and advise the City Council in the determination of policies and reports on financial status and general conditions of the City; recommend legislation and policies required in the public interest.

- Educate and inform stakeholders on the merits, challenges, and alternative solutions for City programs, policies and activities.
- Oversee the enforcement of all City ordinances.
- Direct the preparation of plans and specifications for work which the City Council orders.
- Interpret, analyze, and explain policies, procedures, and programs.
- Confer with residents, taxpayers, businesses, and other individuals, groups, and outside agencies having an interest or potential interest in affairs of City concern.
- Respond to media inquiries, City Council concerns and issues, and community needs.
- Respond to the most difficult, sensitive, and/or controversial issues, complaints and requests for information.
- Investigate complaints regarding the management of City departments; conduct or direct investigation into complaints, problems, and service levels; resolve public complaints.
- Represent the City to all departments, in the community, and at professional meetings.
- Coordinate City activities with other governmental agencies and outside organizations; attend and participate in professional group meetings; stay abreast of new trends and innovations in the field of city management and administration.
- Select, supervise, train, and evaluate staff.
- Perform the duties of the City Manager as described in the Milpitas Municipal Code.
- Perform related duties as assigned.

QUALIFICATIONS

Knowledge of:

- Modern municipal administrative principles and practices, organization, and functions.
- Current social, political, and economic trends and operating problems of municipal government.
- Applicable Federal and State laws, rules, and regulations regarding local government operations.
- Principles of effective public relations and interrelationships with community groups and agencies, private businesses and firms, and other levels of government.
- Laws and regulations regarding City management, City contracts for public services, budget, finance, and public personnel administration.
- Effective supervisory, leadership, and management techniques.

Ability to:

- Communicate clearly and concisely, both orally and in writing.
- Analyze, interpret, summarize, and present administrative and technical information and data in an effective manner.
- Appraise situations and people accurately and quickly, and adopt an effective course of action.
- Manage and provide leadership; serve effectively as the administrative officer of the City Council.
- Select, supervise, train, motivate, coach, and evaluate staff.

- Develop and implement effective City organizational policies and procedures.
- Establish priorities and direct the allocation of City resources.
- Build and maintain positive working relationships with those contacted in the course of work, including City Council, co-workers, department heads, other city employees, and the public using principles of good customer service.
- Work with various cultural and ethnic groups in a tactful and effective manner.

EDUCATION AND EXPERIENCE

Any combination of experience and education that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Education:

- Equivalent to a Master's degree from an accredited college or university with major course work in business administration, public administration, political science or a closely related field; or a Bachelor's degree in business administration, public administration, political science or a closely related field with at least two years of city management experience.

Experience:

- Four to seven years of experience in city government, management and administration, including significant responsibility within the operation of a City Manager's Office

CERTIFICATE

- Possession of a valid Class C California Driver's License.

SPECIAL REQUIREMENTS:

Essential duties require the following physical abilities and work environment:

Work in a general office environment; sit and/or stand for long periods of time, repetitive keyboarding; reach, squat, lift, and carry up to 25 pounds; able to travel to various locations within and outside the City of Milpitas.

Approved by:

City Manager

Date

Human Resources Director

Date

Title VI - PERSONNEL

Chapters:			
VI-1	City Manager	419	
VI-3	Departments, Assignments and Appointments	423	
VI-10	Public Safety Dispatcher Training and Selection	424.1	
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Chapter 1 - CITY MANAGER

Sections:

Section 1 - Establishment

The office of City Manager and the City Manager form of government is hereby established in the City of Milpitas pursuant to the provisions of Section 34851a et seq., of the Government Code of the State of California.

(Ord. 63 (part), 8/20/57)

Section 2 - Duties and Responsibilities

VI-1-2.01 - Manager Responsible to the Council

The City Manager shall be the chief executive officer of the City Council of the City of Milpitas and shall act as the agent for and on behalf of the Council in the discharge of its administrative functions. He shall be responsible to the City Council for the administration of all affairs of the City except as otherwise provided herein.

(Ord. 63 (part), 8/20/57)

VI-1-2.02 - Manager Shall Attend All City Council Meetings and Make Reports

The City Manager shall attend all regular and special meetings of the City Council. He shall report to the Council as requested by the City Council and as he deems necessary. He shall keep the Council advised of the financial condition and future needs of the city and shall make such recommendations as he may deem desirable.

(Ord. 63 (part), 8/20/57)

VI-1-2.03 - Appointment and Removal of Employees by Manager

The City Manager shall be the "appointing officer" of the City, and shall have the power to appoint and dismiss all subordinate appointive officers and employees, subject to the provisions of the City's Municipal Code. Provided, however, that the provisions of this Section shall not apply to the City Attorney.

(Ord. 52.5 (part), 11/18/97: Ord. 63 (part), 8/20/57)

VI-1-2.04 - Council Dealing with Administrative Staff through City Manager

Except for purposes of inquiry, the City Council and its members shall deal with the administrative staff solely through the City Manager.

(Ord. 63 (part), 8/20/57)

VI-1-2.05 - Preparation and Administration of the Budget

The City Manager shall prepare the budget annually and submit it to the City Council, and he shall be responsible for its administration after adoption. He shall supervise the expenditures of and act as the purchasing agent for all the departments, divisions and services of the city government. The City Manager shall prepare and submit to the City Council a complete report as of the end of each fiscal year on the finances and administrative activities of the City during the preceding year.

(Ord. 63 (part), 8/20/57)

VI-1-2.06 - Performance of Other Duties

The City Manager shall perform such other duties as are consistent with this chapter and as may be prescribed by ordinance, resolution, or order of the City Council.

(Ord. 63 (part), 8/20/57)

VI-1-2.07 - Designation of Administrative Officer when Manager is Absent or Disabled

The City Manager may designate in writing a qualified administrative officer of the City to perform his duties during his temporary absence or disability. In the event of the failure of the City Manager to make such designation, the Council may by resolution appoint an officer of the City to perform the duties of the City Manager until he shall return or his disability shall cease.

(Ord. 63 (part), 8/20/57)

VI-1-2.08 - Creation of Departments and Subdivisions

The work of the city government may be distributed among such departments, divisions, and services thereof as may be established by ordinance of the City Council upon recommendation of the City Manager. Pending the passage of an ordinance distributing such work, the Manager may establish temporary departments, divisions, and services.

(Ord. 63 (part), 8/20/57)

VI-1-2.09 - Furnishing Bond

The City Manager shall furnish a bond to the City of Milpitas conditioned upon the faithful performance of his duties in a penal sum and with such corporate surety as the Council may require. The premium for said bond shall be paid by the City of Milpitas.

(Ord. 63 (part), 8/20/57)

VI-1-2.10 - Appointment and Removal

The City Manager shall be appointed by a majority of the City Council and shall serve until he or she is removed by a majority of the members or until his or her resignation.

(Ord. 52.4, 2/2/93; Ord. 63 (part), 8/20/57)

VI-1-2.11 - Notice of Resignation

The City Manager may resign from his position upon at least thirty (30) days' notice in writing to the City Council.

(Ord. 63 (part), 8/20/57)

VI-1-2.12 - Compensation

The compensation, annual leave, sick leave and other recompense of the City Manager and perquisites of his office shall be as determined by order or resolution of the City Council.

(Ord. 63 (part), 8/20/57)

VI-1-2.13 - Assigning Additional Duties

Wherever any order, resolution or ordinance of the City Council of the City of Milpitas has heretofore or hereafter assigned any power or duty or granted any right or privilege to the City Administrator of the City of Milpitas, the City Manager of the City of Milpitas shall be empowered and shall be assigned said power or duty and shall be granted said right or privilege.

(Ord. 63 (part), 8/20/57)

VI-1-2.14 - Signatures.

The City Manager and his or her designee, upon approval of the City Council, shall have the authority to sign and execute the following instruments:

- (a) All warrants drawn on the City Treasury.
- (b) All written contracts and conveyances made or entered into by the City.
- (c) All instruments requiring the City seal.

(Ord. 63.2, 6/15/99)

Section 3 - Transfer of Duties to City Manager

VI-1-3.01 - City Clerk

Pursuant to the provisions of Section 34004 of the Government Code of the State of California, the City Council of the City of Milpitas does hereby transfer from the City Clerk of the City of Milpitas to the City Manager of the City of Milpitas, any duty imposed upon said Clerk by any law of the State of California or any rule or regulation adopted under the authority of any such law except as hereinafter provided, and any duty imposed upon the City Clerk by any ordinance or resolution of the City of Milpitas, or any rule or regulation adopted under the authority of any ordinance or resolution of the City of Milpitas except as hereinafter provided:

(Ord. 52.2, 1/16/63)

3.01-1 Exception: The City Clerk may sign and execute any evidence of indebtedness, bond, indenture, or document specified by law or contract to be signed or executed by the City Clerk in connection with the issuance, sale or redemption of bonds, and evidences of indebtedness, and the qualification for or acceptance of grants, the proceedings for the authorization or incurring of which have been conducted by, or pursuant to the authority of the City Council.

(Ord. 52.2, 1/16/63)

3.01-2 Exception: The City Clerk shall have concurrent authority (with the City Manager) to administer oaths or affirmations and take and certify affidavits and depositions pertaining to city affairs and business pursuant to the authority granted by 40814 of the Government Code of the State of California.

(Ord. 52.2, 1/16/63)

VI-1-3.02 - Treasurer

Pursuant to the provisions of 34004 of the Government Code of the State of California, the City Council of the City of Milpitas does hereby transfer from the City Treasurer of the City of Milpitas to the City Manager of the City of Milpitas, any duty imposed upon said Treasurer by any law of the State of California or any rule or regulation adopted under the authority of any such law except as hereinafter provided, and any duty imposed upon the City Treasurer by any ordinance or resolution of the City of Milpitas, or any rule or regulation adopted under the authority of any ordinance or resolution of the City of Milpitas except as hereinafter provided:

(Ord. 52.2, 1/16/63)

3.02-1 Exception: The City Treasurer may continue to sign voucher checks of the City of Milpitas to the extent granted by resolution of the City Council enacted under authority of 37203 of the Government Code.

3.02-2 Exception: The City Treasurer may sign and execute any evidence of indebtedness, bond, indenture, or document specified by law or contract to be signed or executed by the City Treasurer in connection with the issuance, sale or redemption of bonds, and evidences of indebtedness, and the qualification for or acceptance of grants, the proceedings for the authorization or incurring of which have been conducted by, or pursuant to the authority of, the City Council.

(Ord. 52.2, 1/16/63)

VI-1-3.03 - Performance of Duties Transferred

It shall be the duty of the City Manager to perform such duties as have been transferred to him, pursuant to the provisions of this section.

(Ord. 52.2, 1/16/63)

VI-1-3.04 - City Manager Empowered to Appoint Clerk and Treasurer

Pursuant to the provisions of Section 36510 of the Government Code of the State of California, the City Manager of the City of Milpitas is hereby empowered to appoint the City Clerk and the City Treasurer.

(Ord. 52.3, 9/18/73)

Section 4 - Employment Contracts

VI-1-4.00

Nothing herein contained shall be construed to prevent the City Council from entering into a written contract of employment with the City Manager. Said contract may, in addition to such other provisions as shall not be in conflict with the provisions of this Chapter, provide for severance pay to the City Manager in the event his employment is terminated by City. No contract of employment, however, shall exceed a term of four years. No contract of employment shall contain any provision inconsistent with the provisions of this Chapter.

(Ord. 63.1, 9/5/78)

VI-1-4.01 - Declaratory of Existing Law

The Council finds and determines that the provisions of this Section VI-1-4.00 are declaratory of existing law and do not constitute a change in said law.

(Ord. 63.1, 9/5/78)

Chapter 3 - DEPARTMENTS, ASSIGNMENTS AND APPOINTMENTS

Sections:

VI-3-1.00 - Establishment of Departments of City

Pursuant to the provision of Section VI-1-2.08 of the Milpitas Municipal Code, the work of the City government shall be distributed among the following departments of the City:

- A. City Manager;
- B. City Attorney;
- C. Finance;
- D. Human Resources;
- E. Information Services;
- F. Planning and Neighborhood Services;

- G. Public Works;
- H. Engineering;
- I. Police;
- J. Fire;
- K. Building and Safety; and
- L. Recreation and Community Services.

(Ord. No. 197.14, § 1, 6/6/17; Ord. No. 197.13, § 2, 6/2/15; Ord. No. 197.12, § 2, 6/5/12; Ord. No. 197.11, § 2, 6-16-09; Ord. 197.10 (1), 6/19/07; Ord. 197.9, 6/6/06; Ord. 197.7, 7/3/01; Ord. 197.6, 9/5/95; Ord. 197.5, 3/21/95; Ord. 197.4, 5/4/94; Ord. 197.3 (A), 8/5/86; Ord. 197.2, 3/16/79; Ord. 197.1 (part), 9/5/78)

VI-3-2.00 - Divisions and Distribution of Work

Subject to other provisions of law, the work of the City government shall be assigned to such departments and such divisions within such departments as the City Manager shall establish and determine.

(Ord. 197.1 (part), 9/5/78)

VI-3-3.00 - Appointment and Removal of Department Heads

The City Manager shall appoint, and at his or her pleasure may dismiss, all City Department Heads. The City Manager's power to appoint and dismiss as described in this Ordinance may not be amended or limited, except as expressly imposed by formal action of the City Council.

(Ord. 52.5 (part), 11/18/97; Ord. 197.1 (part), 9/5/78)

VI-3-4.00 - Severance Payments for Specified "At-Will" Positions

1. Application. The ordinance codified in this Section shall permit the payment of severance to City employees serving in any of the following positions on an "at-will" (i.e., exempt) basis: Department Heads; Chief Building Official; and City Engineer (hereafter "qualifying positions").
2. Severance Schedule. In exchange for a general release in a form subject to approval by the City Attorney, the City Manager may grant severance pay pursuant to this Section on the following schedule. Severance pay shall be based on an employee's base salary at the time of separation and is subject to all applicable withholding as determined by the City or appropriate taxing authorities:

For employees with up to one year of City service in a qualifying position: Four weeks' salary.

For employees with greater than one year, but no more than five years, of City service in a qualifying position: Four weeks' salary, plus two weeks' salary for each additional year of City service in a qualifying position (maximum twelve weeks' salary).

For employees with greater than five years of City service in a qualifying position: Twelve weeks' salary, plus one week's salary for each additional year of City service in a qualifying position not to exceed a total of four additional weeks' salary.

3. Criteria and Administration.

- (a) The maximum amount of severance payable under this Section sixteen weeks' salary. The minimum City service required in a qualifying position in order to receive this amount is nine years.
- (b) A year of City service means at least 2080 hours during a twelve-month period in a paid status.
- (c) Severance payments under this Section shall not be paid until after the City Attorney approves the release and after any statutory waiting periods have expired (e.g., the seven-day waiting period under the ADEA).
- (d) Severance payments may be made under this Section only after an employee is dismissed without cause or is laid off. Employees who voluntarily resign, retire, or who are dismissed "for cause" are ineligible for severance payments made under this section. Dismissal "for cause" includes any dismissal made for reasons of fraud, dishonesty, insubordination, theft, misappropriation or misuse of City property, excessive absenteeism, actions prohibited by the City's anti-discrimination policies, or conduct that would constitute a crime. The City Manager shall have the discretion to determine whether dismissals are "for cause" under this section.

(Ord. 197.8, 6/4/02)

Chapter 10 - PUBLIC SAFETY DISPATCHER TRAINING AND SELECTION

Sections:

VI-10-1.00 - Purpose

The City of Milpitas declares that it desires to qualify to receive aid from the State of California under the provisions of Section 13522, Chapter 1, of Title 4, Part 4, of the California Penal Code.

(Ord. 235 (part), 4/3/90)

VI-10-2.00 - State Standards

Pursuant to Section 13510(c), Chapter 1, the City of Milpitas will adhere to standards for recruitment and training established by the California Commission on Peace Officer Standards and Training (POST).

(Ord. 235 (part), 4/3/90)

VI-10-3.00 - Adherence to Standards

Pursuant to section 13512, Chapter 1, the Commission and its representatives may make such inquiries as deemed appropriate by the Commission to ascertain that the City of Milpitas public safety dispatcher personnel adhere to standards for selection and training established by the Commission on Peace Officer Standards and Training.

(Ord. 235 (part), 4/3/90)

Chapter 101 - PERSONNEL SYSTEM

Sections:

[Section 1. - Adoption of Personnel System]

VI-101-1.00 - Adoption of Personnel System

In order to establish an equitable and uniform procedure for dealing with personnel matters; to attract to municipal service the best and most competent persons available; to assure that appointments and promotions of employees will be based on merit and fitness as determined by competitive test; and to provide a reasonable degree of security for qualified employees, the following personnel system is hereby adopted.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

[Section 2. - Personnel Officer]

VI-101-2.00 - Personnel Officer

VI-101-2.01 - Duties and Responsibilities

The City Manager shall be ex-officio personnel officer. The City Manager may delegate any of the powers and duties as personnel officer under this Chapter to any other officer or employee of the City or may recommend that such powers and duties be performed under contract as provided in Section VI-101-15 of this Chapter. The Personnel Officer shall:

2.01-1 Administer all the provisions of this Chapter and of the personnel rules not specifically reserved to the Council.

2.01-2 Prepare and recommend to the Council revisions and amendments to the personnel rules. The City Attorney shall approve the legality of such revisions and amendments prior to their submission to the Council.

2.01-3 Prepare a position classification plan, including class specifications, and revisions of the plan. The plan, and any revisions thereof, shall become effective upon approval by the Council.

2.01-4 Prepare a plan of compensation, and revisions thereof, covering all classifications in the competitive service. The plan, and any revisions thereof, shall become effective upon approval by the Council.

(Ord. 111.8 (C)(part), (D), 4/17/90; Ord. 111 (part), 8/6/63)

[Section 3. - Competitive Service]

VI-101-3.00 - Competitive Service

The provisions of this Chapter shall apply to all offices, positions, and employments in the service of the City, except the following "exempt" positions.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-3.01 - Positions Exempt from Competitive Service

3.01-1 All elected officials.

3.01-2 Members of appointive boards, commissions and committees.

3.01-3 Persons engaged under contract to supply expert, professional or technical services for a definite period of time.

3.01-4 Volunteer personnel, such as volunteer firemen, who receive no regular compensation from the City.

3.01-5 The City Attorney, the City Clerk, and City Treasurer.

3.01-6 The City Manager and Assistant City Manager.

3.01-7 Department Heads, Directors, Division Heads and other employees with significant responsibility for formulating and administering City policies and programs.

(Ord. 111.8 (C)(part), (E), 4/17/90; Ord 111.2, 6/22/70; Ord. 111 (part), 8/6/63)

[Section 4. - Adoption of Rules]

VI-101-4.00 - Adoption of Rules

Personnel rules, prepared by the City Manager subject to this Chapter and to revision by the Council, shall be adopted, and may be amended from time to time, by resolution of the Council. The rules shall establish specific procedures and regulations governing the following phases of the personnel system:

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-4.01 - Coverage of Such Rules

4.01-1 Preparation, installation, revision, and maintenance of a position classification plan covering all positions in the competitive service, including employment standards and qualifications for each class.

4.01-2 Preparation, revision, and administration of a plan of compensation directly correlated with the position classification plan, providing a rate or range of pay for each class.

4.01-3 Public announcement of all tests and the acceptance of applications for employment.

4.01-4 Preparation and conduct of tests and the establishment and use of resulting employment lists containing names of persons eligible for appointment.

4.01-5 Certification and appointment of persons for employment lists, and the making of temporary and emergency appointments.

4.01-6 Transfer, promotion, demotion, and reinstatement of employees in the competitive service.

4.01-7 Separation of employees from the City service through lay-off, suspension, and dismissal.

4.01-8 Standardization of hours of work, attendance and leave regulations, working conditions and the development of employee morale, welfare, and training.

4.01-9 Suitable provision for orderly and equitable presentations to the City Manager and to the City Council by employees relating to general conditions of employment.

4.01-10 Content, maintenance, and use of personnel records and forms.

4.01-11 Not codified.

4.01-12 Any other procedures and regulations necessary to carry out the provisions of this Chapter.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

[Section 5. - Appointments]

VI-101-5.00 - Appointments

VI-101-5.01 - Competitive

Examinations

Appointments to vacant positions in the competitive service shall be made in accordance with the personnel rules. Appointments and promotions shall be based on merit and fitness to be ascertained so far as practicable by competitive examinations. Examinations shall not be required for the reinstatement of employees to the same or comparable class, for which they are qualified and from which they were separated as a result of resignation in good standing or reduction in force.

Provided however, the City Council shall be entitled to establish preference in the competitive examination procedure for veterans of the United States armed forces as defined by and under rules and regulations adopted by the City Council by resolution.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111.7, 2/18/86; Ord. 111 (part), 8/6/63)

VI-101-5.02 - Power to Make Appointments

Appointments shall be made by the City Council, City Manager, Department Heads, Personnel Officer or the officer in whom the power to make appointments is vested by law.

(Ord. 111.8 (C)(part), (F), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-5.03 - Temporary appointment

In the absence of appropriate employment lists, a temporary appointment may be made in accordance with the Personnel Rules.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-5.04 - Emergency appointments

Emergency appointments shall be made in accordance with state law and the personnel rules.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 6 - Probationary Period

All regular appointments, including promotional appointments, shall be for a probationary period of not less than six months.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 7 - Status of Present Employees

VI-101-7.01 - Exemption From Qualifying

Any person holding a position included in the competitive service who, on the effective date of this Chapter, shall have served continuously in such position for a period equal to the probationary period prescribed in the rules for his class, shall assume regular status in the competitive service in the position held on such effective date without qualifying test, and shall thereafter be subject in all respects to the provisions of this Chapter and the personnel rules.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-7.02 - Present Employee in Probationary Period

Any other persons holding positions in the competitive service shall be regarded as probationers who are serving out the balance of their probationary periods as prescribed in the rules before obtaining regular status. The probationary period shall be computed from the date of appointment or employment.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 8 - Applicability of Rules to Certain Exempt Positions

The provisions of the personnel rules relating to attendance and leaves shall apply to the incumbents of full-time exempt positions.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 9 - Appointments Subject to Ordinance

The City Council, City Manager, and any other officer in whom is vested the power to appoint, make transfers, promotions, demotions, reinstatements, lay-offs, and to suspend or dismiss employees, shall retain such power, subject to the provisions of this chapter and the personnel rules.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 10 - Suspension

Any person holding a position or employment in the competitive service shall be subject to disciplinary suspension without pay by the appointing power, provided that such suspensions are in accordance with the provisions of this chapter and the personnel rules relating to appeals procedure.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 11 - Right of Appeal

Except as otherwise provided in a Memorandum of Understanding approved by the City Council, any employee shall have the right to appeal any disciplinary action, suspension, demotion, reduction or alleged violation of the personnel ordinance or rules. The administration of appeals shall be governed by the personnel rules.

(Ord. 111.8 (C)(part), (G), 4/17/90: Ord. 111.7 (part), 1/6/87: Ord. 111 (part), 8/6/63)

Section 12 - Improper Political Activity

Any person holding an office or employment in the competitive service shall not:

- (a) Deleted by Ord. 111.3.
- (b) During hours of work, or when dressed in the uniform required in any department of the City government or when wearing any City insignia required or permitted in any department of the City government or while identifying himself as an officer or employee of the City of Milpitas, participate in any City, District, County, State, Federal or other political activity or participate in any nomination, campaign or election (except as expressly authorized by the City Manager of City.)
- (c) Use his office or employment or title or City uniform or City insignia in connection with any City, District, County, State, Federal or other political activity or in connection with any nomination, campaign or election (except as expressly authorized by the City Manager).

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111.3, 6/18/74; Ord. 111.1, 5/28/68; Ord. 111 (part), 8/6/63)

Section 13 - Activities Not Affected

This chapter does not prevent any officer or employee from:

- (a) Becoming or continuing to be a member of a political club or organization.
- (b) Attendance at a political meeting.
- (c) Enjoying entire freedom from all interference in casting his vote.
- (d) Seeking or accepting election or appointment to public office while on leave of absence.
- (e) Seeking signatures to any initiative or referendum petition directly affecting his rates of pay, hours of work, retirement, civil service, or other working conditions provided such activity is not carried on during hours of work.
- (f) Distributing badges, pamphlets, dodgers, or handbills or other participation in any campaign in connection with such petition if the activity is not carried on during hours of work, or when he is dressed in the uniform required in any department of the city government.

The violation of any provision of Sections 12 or 13 is ground for discharge of any officer or employee.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 14 - Discrimination

All recruitment, hiring, placements, transfers and promotions shall be on the basis of qualifications of the individual for the positions being filled regardless of race, color, religion, ancestry, national origin, age (over forty years), sex, marital status, medical condition (cured or rehabilitated cancer), physical handicap, political affiliation or union activity. All other personnel actions, such as compensation, benefits, layoffs, returns from layoffs, disciplinary actions, training and social and recreational programs shall also be administered regardless of race, color, religion, ancestry, national origin, age (over forty years), sex, marital status, medical condition, physical handicap, political affiliation or union activity.

(Ord. 111.8 (C)(part), (H), 4/17/90: Ord. 111 (part), 8/6/63)

Section 15 - Right to Contract for Special Service

The City Manager shall consider and make recommendations to the City Council regarding the extent to which the City should contract for the performance of technical services in connection with the establishment or operation of the personnel system. The Council may contract with any qualified person or agency for the performance of all or any of the following responsibilities and duties imposed by this Chapter:

- (a) The preparation of personnel rules and subsequent revisions and amendments thereof.
- (b) The preparation of a position-classification plan, and subsequent revisions and amendments thereof.
- (c) The preparation of a plan of compensation, and subsequent revisions and amendments thereof.
- (d) The preparation, conduct and grading of competitive tests.
- (e) Special and technical services of advisory or informational character on matters relating to personnel administration.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 16 - Appropriation of Funds

The Council shall appropriate such funds as are necessary to carry out the provisions of this Chapter.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 17 - Penalty Provision

See I-1-4.09-1

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 18 - Regulations Regarding Nepotism

VI-101-18.01

As used herein, the term "relative" means the following relationships by blood, marriage or adoption: Spouse, father, mother, sister, brother, son, daughter, niece, nephew, aunt, uncle, stepfather, stepmother, stepsister, stepbrother, stepson, stepdaughter.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-18.02

The provisions of this Section shall not apply to any officer, employee or appointee holding any office, employment or appointment prior to thirty days following the adoption of this Section.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-18.03

No person shall be disqualified for appointment as an employee of the City or disqualified from assignment or transfer for the sole reason that said person is a relative of another City officer or employee except as follows:

- a) No person shall serve in a position where said person is subject to supervision, evaluation, discipline or having his/her compensation determined by a relative.
- b) No person who is a relative of a department head shall serve in the department of said department head.
- c) No person who is a relative of a division head shall serve in the same division as said division head.
- d) No relative of the City Manager, Mayor, or of any City Council member shall serve in any city position provided nothing herein contained:
 - (i) shall be a limitation upon the power of the electorate to elect a Mayor or Council member, notwithstanding the fact that at the time of said election, said Mayor or Council member shall have a relative employed by the City
 - (ii) shall be a limitation upon the power of the Mayor or Council to appoint any Council member or other City officer, notwithstanding the fact that at the time of the appointment, the appointee has a relative employed by the City.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111.6, 2/18/86; Ord. 111 (part), 8/6/63)

Chapter 102 - PROVISIONS FOR REDUCING CITY WORK FORCE

Sections:

Section 1 - Abolition or Reduction of Authorized Positions

VI-102-1.00

Whenever in the judgment of the City Council it becomes necessary in the interest of economy or because the necessity for any authorized position in the City service no longer exists, the City Council may eliminate or reduce the number of any or all authorized positions within the City service without the right of appeal of the decision to eliminate or reduce the positions.

(Ord. 111.5 (part), 6/20/78)

Section 2 - Demotion Within the Competitive Service Classifications Above the Entry Level

VI-102-2.00

In reducing the number of personnel within classification(s) the least senior employee(s) within the affected class(es) shall be displaced either through demotion or lay-off. Seniority for the purpose of this section, is defined as the employee's total time served within the specified classification, or higher classification(s) within the job series. In the event two or more employees have served the same amount

of time in a classification, seniority shall be determined by their respective position on the employment list for the specified classification. All temporary employees in the affected class or classes shall be laid off prior to the displacement of any probationary or permanent employee.

Any permanent employee who is displaced as provided for in Section 1, may elect to accept a demotion in lieu of lay-off to a lower level related classification, or an unrelated classification previously held on a permanent basis, provided, however, that two conditions are met:

- 1) that the employee accepting demotion meets the qualifications for the classification he/she has elected for the demotion OR has previously held the classification; and
- 2) that the employee accepting demotion must have a length of service either in the higher classification(s), the classification he/she is considering for demotion, or a combination of both which is greater than the least senior employee in the classification to which he/she intends to accept the demotion.

(Ord. 111.5 (part), 6/20/78)

Section 3 - Exempt Employees May Return to the Competitive Service

VI-102-3.00

Any exempt employee who was promoted from the Competitive Service may elect a demotion to the Competitive Service in lieu of layoff. Once elected, said employee shall be eligible for demotion to a lower level classification in accordance with the provisions of Section 2.

(Ord. 111.8 (I)(part), 4/17/90: Ord. 111.5 (part), 6/20/78)

Section 4 - Lay-Off

VI-102-4.00

Seniority, for the purpose of this section, shall be defined as the total cumulative time of City service and shall be observed in effecting lay-offs. The order of lay-off shall be in the reverse order of total cumulative time served in permanent positions in the City service upon the effective date of lay-off. Lay-off shall be made within classes of positions, and all temporary employees in the affected class or classes shall be laid off prior to the lay-off of any probationary or permanent employee.

Each employee laid off shall receive a final performance evaluation to be based on job performance since the employee's last performance appraisal. Thereafter, the Department head shall certify as to the affected employee's competency if overall service in the classification has been satisfactory. If not certified as having given satisfactory service, the employee laid off may interpret the action as a discharge and request a hearing as provided by the Personnel Ordinance. An employee who is laid off must be certified as competent, in order to be placed on the re-employment list.

(Ord. 111.5 (part), 6/20/78)

Section 5 - Time Served on Military Leave

VI-102-5.00

For the purpose of determining displacement within classifications in accordance with this Chapter, time served on military leave shall be included as time served within the classification held at the time the military leave was taken, and in accordance with the Military and Veterans Code of the State of California.

(Ord. 111.5 (part), 6/20/78)

Section 6 - Notice of Lay-Off

VI-102-6.00

Pursuant to Section 1 of this Chapter, the City shall provide employees who may be affected by lay-off, a thirty (30) calendar day written preliminary notice of intent to lay-off. The preliminary notice shall also advise the employee whether, in accordance with this Chapter, they may elect demotion in lieu of lay-off. Employees who are notified that they may elect demotion in lieu of lay-off, must advise the City Manager's Office within fifteen (15) calendar days, of their decision to exercise the demotion option or forfeit their rights to the demotion in lieu of lay-off. Thereafter, the City shall provide a written confirmed notice of lay-off at least ten (10) working days prior to the effective date of lay-off. Reasonable effort shall be made to ensure notification. The recognized employee group representatives for the affected classes shall be notified concurrently on the preliminary and confirmed lay-off notices.

(Ord. 111.5 (part), 6/20/78)

Section 7 - Re-Employment Lists

VI-102-7.00

The names of probationary and permanent employees laid off or demoted in accordance with this Chapter shall be placed on a re-employment list in the reverse order of their displacement, whether it be by lay-off or demotion. The lists shall be prepared by classes which, in the opinion of the City Manager, require basically the same qualifications and duties and responsibilities for those of the class or classes of positions from which lay-off or demotion occurred. Re-employment lists shall remain in effect for seven years following their promulgation, except that the names of employees who are laid off shall be removed after three years.

Employees who are laid off in accordance with this Chapter are required to keep the City Manager's Office informed of any change of address or telephone number. Employees shall be returned in the reverse order of their displacement.

An employee's name shall be removed from the re-employment list, if:

- 1) the individual has been certified for appointment three times and has refused the appointments; and/or
- 2) has resigned from City service during the period the list is in effect.

In the event an employee's name is removed from the re-employment list for refusing an appointment three times, he/she may petition the City Manager in writing for reinstatement to the list. If good cause can be demonstrated as to why the individual did not accept any of the appointments, the City Manager may reinstate the individual to the list.

(Ord. 111.5 (part), 6/20/78)

Section 8 - Conditions of Re-Employment

VI-102-8.00

Upon re-employment, any employee who was laid off in accordance with Section 4 of this Chapter shall have his/her status restored and/or modified pursuant to the existing Memorandum of Understanding in effect at the time of lay-off or subsequent Memorandum of Understanding. The intent of this section is to restore at least the following:

- 1) the same vacation accrual rate;
- 2) his/her sick leave balance in effect at the time of lay-off;
- 3) his/her seniority (time served in permanent positions within the City service), at the time of lay-off;
- 4) if re-employed in the same classification, or substantially the same classification, the employee shall be returned to the same step of the current salary range for that classification;
- 5) if re-employed in a lower classification, the employee's salary shall be established as though he/she had been demoted to the position; and
- 6) upon re-employment the applicant shall provide a written statement that he/she has not incurred any disability during the period of lay-off which would prevent the applicant from performing the duties of that position.

(Ord. 111.5 (part), 6/20/78)

Section 9 - Waiver

VI-102-9.00

Unless modified herein, all other existing provisions remain as established.

(Ord. 111.5 (part), 6/20/78)

Section 10 - Severability

See I-1-4.12

(Ord. 111.5 (part), 6/20/78)

Section 11 - Criteria for Demotion Within Exempt Classifications

VI-102-11.00

In reducing the number of exempt personnel, displacement within classification(s) shall be made by the City Manager after reviewing the Department Head's recommendation and may take into consideration the following four factors:

- 1) consideration of the seniority of the employee(s) affected;
- 2) the nature of the services performed by the employee(s) affected or which the employee(s) affected are capable of rendering;
- 3) the importance of the service rendered to the City and to the community; and

4) the availability of funds.

(Ord. 111.8 (I)(part), 4/17/90: Ord. 111.5 (part), 6/20/78)

Section 12 - Outsourcing of Sworn Safety Personnel

VI-102-12.00

Police and Fire services are currently provided by employees of the City within Departments of the City utilizing City owned facilities and equipment. Any proposal to outsource the public safety functions of these departments as currently organized may not be implemented without first being approved by the voters of the City of Milpitas. Outsourcing within the meaning of this Ordinance means laying off or terminating the employment of the employees currently providing these services and replacing those persons with personnel not employees of the City. This provision shall not affect the authority of the City to otherwise reduce its workforce, as provided in this Chapter, or to take disciplinary action regarding any employee for cause, or otherwise exercise management authority to organize these departments and personnel as allowed under this Code, the Personnel Rules and applicable MOU provisions.

(Ord. No. 283, § 2, 11/6/12)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Accept Committee Member and Commissioner Resignations
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/21/2021
Staff Contact:	Wendy Wood, City Clerk, 408-586-3001
Recommendation:	Accept the resignations of Committee Member Nicholas Dold from the Measure F Oversight Committee and Arthur Ebright from the Veteran's Commission; and confirm the posting of the unscheduled vacancies.

Background:

In accordance with the City of Milpitas Commission By-Laws, any member or alternate member of a Commission who is no longer available to serve, must submit a resignation in writing by sending a written communication to the Mayor and the City Clerk, per adopted City Council Resolution No. 7702. The written resignation must then be accepted and confirmed by City Council via action on the consent calendar at a regularly scheduled City Council meeting. Nicholas Dold submitted a notice of resignation from Measure F Oversight Committee, and Arthur Ebright submitted a notice of resignation from the Veteran's commission.

Analysis:

By state law, a Notice of an Unscheduled Vacancy must be posted by the City Clerk to advertise the vacant Commission seat. Final appointment to the board, commission, or committee for the Unscheduled Vacancy shall not be made by the legislative body for at least ten working days after the posting of the notice in the Clerk's office. The notice of the unscheduled vacancies for the Measure F Oversight Committee and the Veteran Commission were posted on September 15, 2021.

Fiscal Impact:

There is no fiscal impact associated with this item.

Recommendation:

Accept the resignations of Commissioner Nicholas Dold from the Measure F Oversight Committee and Arthur Ebright from the Veteran's Commission; and confirm the noticing of the unscheduled vacancies.

Attachments:

1. Email from Committee Member Nicholas Dold
2. Email from Former Commissioner Arthur Ebright

Wendy Wood

Subject: FW: [BULK] Re: 09/16 Measure F Oversight Committee Meeting

Importance: Low

On Sep 10, 2021, at 6:10 PM, Nicholas Dold wrote:

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Mr. F Oversight Committee,

I regret to submit this email as resignation from my appointment to this committee.

As of September 15, 2021 I will no longer be a resident of Milpitas as I have accepted a new job in the American Midwest.

My relocation out of California precludes my involvement in this committee.

Thank you for the opportunity to participate in my local government. I wish everyone well,

--

Nicholas Dold

Adjunct Faculty | Piano
Santa Clara University

Music Associate Staff | Collaborative Piano *(On leave 2021-22)*
San Francisco Conservatory of Music

From: [admin](#)
To: [Rich Tran](#)
Cc: [Arthur & Barbara Ebright](#)
Subject: Retirement from the Veterans Commission

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Mayor Tran,

I have decided to retire from the Veterans Commission on my 80th birthday, in July. I was 68 when I joined the commission at its inception and we held our first meeting on April 7, 2010. It has been an honor to be a member of the Milpitas Veterans Commission for a little over 11 years and I depart with many fond memories working with past commissioners and particularly with city staff members who always worked to ensure our success. Their hard work was always appreciated.

Sincerely,
Arthur L. Ebright



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Approve the Draft FY 2020-2021 Community Development Block Grant (CDBG)'s Consolidated Annual Performance and Evaluation Report (CAPER)
Category:	Public Hearings-Community Development
Meeting Date:	9/21/2021
Staff Contact:	Sharon Goei, Director of Building Safety and Housing, 408-586-3260 Robert Musallam, Housing and Neighborhood Services Administrator, 408-586-3275
Recommendations:	1. Open the public hearing, hear testimony, then move to close the public hearing. 2. Approve the draft FY 2020-2021 Community Development Block Grant (CDBG)'s Consolidated Annual Performance and Evaluation Report (CAPER). 3. Authorize the City Manager, or designee, to make any necessary changes and to submit the approved draft FY 2020-2021 CAPER to the U.S. Department of Housing and Urban Development (HUD) to comply with CDBG requirements.

Background:

Every year, in September, the Consolidated Annual Performance and Evaluation Report (CAPER) is required to be submitted to the U.S. Department of Housing and Urban Development (HUD). The CAPER summarizes the accomplishments of the past funding cycle and the progress towards the priority needs and goals identified in the Consolidated Plan.

The 2020-2021 CAPER describes the City's activities for FY 2020-2021 and the accomplishments toward meeting the priority needs and goals from the 2017-2022 Consolidated Plan. The CAPER further describes actual expenditures and outcomes relative to the targets in the FY 2020-2021 Annual Action Plan. This CAPER is the fourth progress report for the 2017-2022 Consolidated Plan that was approved by the City Council in 2017.

Analysis:

In FY 2020-2021, CDBG allocations comprised of the City's original formula allocation of \$676,413, the City's first CDBG-CV allocation of \$397,911, and prior year unused funds in the amount of \$290,039. In total, the City allocated \$1,364,363 to 13 organizations for a variety of activities.

The CAPER identifies some of the major accomplishments in 2020-2021:

- **Catholic Charities Long Term Care Ombudsman Program** made 56 unduplicated visits to Milpitas residents in long-term care.
- **Child Advocates of Silicon Valley** served and connected 10 Milpitas foster children youth and children to CASAs.
- **Enterprise Foundation** provided direct aid to 38 microenterprises in Milpitas.
- **The Milpitas Senior Center** provided healthy meals and nutrition services to 251 Milpitas seniors.
- **The Milpitas Senior Center** provided 25 laptops/tablets to Milpitas seniors to increase digital inclusion, access to technology, and to help bridge the digital divide.
- **Milpitas Unified School District** provided nutritious snacks to 470 McKinney-Vento students.
- **Next Door Solutions to Domestic Violence** provided 62 residents supportive services and

emergency shelter to victims of domestic violence.

- **The Health Trust Meals on Wheels Program** provided 3,640 hot meals to 21 homebound, low-income seniors. Additionally, they completed 606 wellness checks to Milpitas seniors.
- **Project Sentinel** handled 9 fair housing cases and 29 individuals benefitted from fair housing services.
- **Project Sentinel** provided wrap-around rent relief/reduction services to 2 individuals.
- **Rebuilding Together Silicon Valley** made housing repairs for 4 Milpitas households.
- **Rebuilding Together Silicon Valley** partnered with Sunnyhills Apartments to provide capital repairs and replace the roofs of 40 apartments.
- **Rebuilding Together Silicon Valley** partnered with the Milpitas Senior Center to distribute COVID kits to 96 low-income Milpitas residents.
- **Senior Adults Legal Assistance** provided free legal services to 20 qualified Milpitas seniors age 62 years or older.
- **Silicon Valley Independent Living Center** provided housing services for persons with disabilities to 48 individuals.
- **Silicon Valley Independent Living Center** served 240 Milpitas residents through the Rent Relief Program.
- **Terrace Gardens Senior Housing** replaced 2 commercial ovens.
- **Terrace Gardens Senior Housing** provided meal delivery services to 184 residents in lieu of community dining, due to the COVID-19 pandemic.
- **YWCA Silicon Valley** provided supportive services and emergency shelter to 27 victims of domestic violence, responded to 118 crisis calls via the 24-hour crisis line, and served 88 persons with crisis counseling identified by the Milpitas Police Department.
- **YWCA Silicon Valley** partnered with MUSD to create a domestic violence prevention curriculum for MUSD students that served 1081 students through their Building Healthy Relationships program.

As anticipated, some CDBG subgrantees experienced an impact on their ability to meet program objectives in Fiscal Year 2020-2021 due to the COVID-19 pandemic. Reasons include the inability to provide services in-person, and a shortage of staffing. As an example, Catholic Charities noted that the pandemic limited access to long term care facilities. As the pandemic surged, Catholic Charities was able to pivot to over-the-phone check-ins on Milpitas seniors to ensure a check-in continued despite the inability to do so in person.

There were also several subgrantees that far exceeded expected outcomes for FY 2020-2021, indicating that at-risk populations in the community had an increased need for services due to the COVID-19 pandemic. Subgrantees such as the Silicon Valley Independent Living Center (rent relief), Milpitas Senior Center (senior nutrition), and Milpitas Unified School District (student nutrition) all exceeded outcomes for FY 2020-2021. Each of the subgrantees during this fiscal year showed great flexibility and continued to provide essential services to the most vulnerable residents of Milpitas by shifting to virtual/telephone services when possible, increasing informational workshops and outreach, and taking extra safety precautions to ensure the health and safety of all individuals being served.

Fiscal Impact:

There is no fiscal impact to the City budget other than staff time related to this item.

California Environmental Quality Act:

The actions being considered have no potential for causing a significant effect on the environment and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

Recommendations:

1. Open the public hearing, hear testimony, then move to close the public hearing.
2. Approve the draft FY 2020-2021 Community Development Block Grant (CDBG)'s Consolidated Annual Performance and Evaluation Report (CAPER).
3. Authorize the City Manager, or designee, to make any necessary changes and to submit the approved draft FY 2020-2021 CAPER to the U.S. Department of Housing and Urban Development (HUD) to comply with CDBG requirements.

Attachment:

1. Draft FY 2020-2021 CAPER

City of Milpitas
Consolidated Annual Performance and Evaluation Report (CAPER) FY 2020-2021
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CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan.

91.520(a)

This could be an overview that includes major initiatives and highlights that were proposed and executed throughout the program year.

The City of Milpitas receives CDBG funds to carry its activities and programs as described in the Consolidated Plan (2017-2022). The following goals are the basis for the activities approved and funded in the Fiscal Year 2020-2021 Annual Action Plan:

- Maintain and Preserve Existing Housing
- New Affordable Housing
- Affordable Housing Rental Rehabilitation
- Community Funding/Public Services
- Public services for low- and moderate-income residents at risk of eviction
- Fair Housing
- Public Services for Children and Youth
- Public Services for Seniors
- Public services for Domestic Violence Support
- Public Improvements including accessibility and improving public facilities
- Assist Microenterprises and Small Businesses
- Explore the use of HUD Section 108 Loan Guarantee Program

Below highlights the funded organizations' accomplishments:

- **Catholic Charities' Long Term Care Ombudsman Program** advocates for the rights of seniors and disabled residents in long term care facilities, made 56 unduplicated visits to Milpitas residents in long-term care.
- **Child Advocates of Silicon Valley** is the only agency in the County that provides court-appointed volunteers (CASA) to each foster child. Child Advocates of Silicon Valley served and connected 10 Milpitas foster children youth and children to CASAs.
- **Enterprise Foundation** provided direct aid to 38 microenterprises in Milpitas.
- **The Milpitas Senior Center** provided healthy meals and nutrition services to 251 Milpitas seniors age 62+.
- **The Milpitas Senior Center** provided 25 laptops/tablets to Milpitas seniors age 62+ to help bridge the digital divide.
- **Milpitas Unified School District** provided nutritious snacks to 470 McKinney Vento Students.
- **Next Door Solutions to Domestic Violence** provided 62 residents supportive services and emergency shelter to victims of domestic violence.
- **The Health Trust' Meals on Wheels Program** provided 3,640 hot meals to 21 homebound, low income seniors. Additionally, they completed 606 wellness checks to Milpitas seniors.

- **Project Sentinel** is contracted to handle fair housing and tenant-landlord cases. For the year, Project Sentinel handled 9 fair housing cases and 29 individuals benefitted from fair housing services.
- **Project Sentinel** provided wraparound rent relief/reduction services to 2 individuals.
- **Rebuilding Together Silicon Valley** preserves affordable housing by providing safety, energy efficiency, accessibility repairs and improvements to qualified low income homeowners. Rebuilding Together made housing repairs for 4 Milpitas households.
- **Rebuilding Together Silicon Valley** partnered with Sunnyhills Apartments to provide capital repairs and replace the roofs of 40 apartments.
- **Rebuilding Together Silicon Valley** partnered with the Barbara Lee Senior Center to distribute COVID kits to 96 low-income Milpitas residents.
- **Senior Adults Legal Assistance** provided free legal services to 20 qualified Milpitas seniors age 62 years or older.
- **Silicon Valley Independent Living Center** provided housing services for persons with disabilities to 48 individuals.
- **Silicon Valley Independent Living Center** served 240 Milpitas residents through the Rent Relief Program.
- **Terrace Gardens Senior Housing** is an affordable housing rental apartment for seniors. Terrace Gardens met their goal of replacing 2 commercial ovens.
- **Terrace Gardens Senior Housing** provided meal delivery services to 184 residents in lieu of community dining, due to the COVID-19 pandemic.
- **YWCA Silicon Valley** provided supportive services and emergency shelter to 27 victims of domestic violence. Additionally, they responded to 118 crisis calls via the 24-hour crisis line, and served 88 persons with crisis counseling identified by the Milpitas Police Department.
- **YWCA Silicon Valley** partnered with MUSD to create a domestic violence prevention curriculum for MUSD students. 1081 students were served through their Building Healthy Relationships program.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

As anticipated, some CDBG subgrantees experienced an impact on their ability to meet program objectives in Fiscal Year 20-21 due to the COVID-19 pandemic. Reasons include the inability to provide services in-person, and a shortage of staffing. There were also several subgrantees that far exceeded expected outcomes for FY 20-21, indicating that at-risk populations in the community had an increased need for services due to the COVID-19 pandemic. Each of the subgrantees during this fiscal year showed great flexibility and continued to provide essential services to the most vulnerable residents of Milpitas by shifting to virtual/telephone services when possible, increasing informational workshops and outreach, and taking extra safety precautions to ensure the health and safety of all individuals being served.

Categories, priority levels, funding sources and amounts, outcomes/objectives, goal outcome indicators, units of measure, targets, actual outcomes/outputs, and percentage completed for each of the grantee's program year goals.

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete
Maintain and Preserve Existing Housing	Affordable Housing Non-Homeless Special Needs	\$500,000	Owner occupied units rehabilitated or improved	Household housing unit	38	132	347%	40	44	110%
New Affordable Housing	Affordable Housing	\$100,000	Rental units constructed	Units Constructed	100	100	100%	n/a	n/a	n/a
Affordable Housing Rental Rehabilitation	Non-housing community development	\$300,000	Rental units rehabilitated	Units rehabilitated	148	1147	775%	148	148	100%
Community Funding/Public Services	Homeless Non-Homeless Special Needs	\$125,000	Number of persons assisted	Persons assisted	1145	2323	203%	n/a	n/a	n/a
Public services for low- and moderate-income residents at risk of eviction	Non-homeless special needs Homeless	\$391,400	Homelessness Prevention	Persons assisted	225	241	107%	250	242	97%
Fair Housing	Affordable Housing Non-homeless special needs	\$50,000	Number of persons assisted	Persons assisted	16	177	1106%	20	29	145%
Public Services for Children and Youth	Non-homeless special needs Non-housing community development	\$75,000	Number of persons assisted	Persons assisted	175	1619	925%	914	1571	172%

Public Services for Seniors	Non-homeless special needs Non-housing community development	\$75,000	Number of persons assisted	Persons assisted	120	1415	1179%	572	665	116%
Public services for Domestic Violence Support	Non-homeless special needs	\$50,000	Number of persons assisted	Persons assisted	50	290	580%	74	89	120%
Public Improvements including accessibility and improving public facilities	Non-housing community development	\$80,000	Number of persons assisted with improved access to a facility or infrastructure benefit	Persons assisted	5000	73	1%	n/a	n/a	n/a
Assist Microenterprises and Small Businesses	Non-housing community development	\$200,000	Businesses assisted	New Businesses assisted	38	38	100%	38	38	100%
Explore the use of HUD Section 108 Loan Guarantee Program	Affordable Housing Homeless Non-housing community development	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Table 1 - Accomplishments – Program Year & Strategic Plan to Date | Sections labeled TBD will be reported on the FY20-21 CAPER

Assess how the jurisdiction's use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.

In June 2020, the City Council substantially amended the Consolidated Plan to address key priorities City residents needed as a result of the COVID-19 pandemic. The CDBG priorities are as follows:

- Maintain and Preserve Existing Housing
- New Affordable Housing
- Affordable Housing Rental Rehabilitation
- Community Funding/Public Services
- Public services for low- and moderate-income residents at risk of eviction
- Fair Housing
- Public Services for Children and Youth
- Public Services for Seniors
- Public services for Domestic Violence Support
- Public Improvements including accessibility and improving public facilities
- Assist Microenterprises and Small Businesses
- Explore the use of HUD Section 108 Loan Guarantee Program

The City established three new priorities: (1) Public services for low- and moderate-income residents at risk of eviction, (2) assist microenterprises and small businesses, and (3) explore the use of HUD section 108 loan guarantee program.

The City has placed a high emphasis on assisting its aging senior population. Eight public service allocations totaling \$216,243 were approved benefiting seniors who are aging in place with long term care, with hot meals via Meal on Wheels and the Senior Nutrition program, with housing search assistance, services to help bridge the digital divide, and free legal services. Additionally, Terrace Gardens, an 100% affordable senior housing development was allocated \$20,000 in CDBG funding for necessary capital improvements to the property.

The City allocated \$31,650 for public service activities to benefit victims of domestic violence, \$65,000 in public services for children and youth, and \$56,290 to Project Sentinel to provide Fair Housing counseling to at risk tenants in Milpitas.

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted).

91.520(a)

	CDBG
White	822
Black or African American	76
Asian	1,579
American Indian or American Native	66
Native Hawaiian or Other Pacific Islander	63
American Indian/Alaskan Native & White	10
Asian & White	0
Black/African American & White	9
A. Indian/Alaskan Native & Black/African A.	1
Other Multi-Racial	200
Total	2,826
Hispanic	493
Not Hispanic	2,333

Table 2 – Table of assistance to racial and ethnic populations by source of funds

Narrative

The data gathered is reflective of the City's demographic as a whole. The table represents the data reported of the Millpitas residents served during the program year of 2020-2021.

CR-15 - Resources and Investments 91.520(a)

Identify the resources made available

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
CDBG	CDBG	\$676,413	
HOME	HOME		
HOPWA	HOPWA		
ESG	ESG		
Other	Other	\$687,950	

Table 3 - Resources Made Available

Narrative

The attached PR26 reported \$1,075,821.45 in CDBG funds that were expended in the reporting program year. The LifeMoves and Terrace Gardens capital projects were affected by COVID-19 in FY19-20. While both projects had to pause due to local government shut downs, which created delays in the timing of the projects, each project was completed in April 2021. As such, the final reimbursements were distributed during the FY20-21 fiscal year and will show on the attached PR26.

Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description

Table 4 – Identify the geographic distribution and location of investments

Narrative

The City of Milpitas has not established specific geographic target areas. CDBG funds serve low to moderate income persons, citywide.

Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

The City anticipates CDBG funds to remain constant at about the \$600,000 per year level. In conjunction with this federal program, the City will receive additional funding in the form of program income – payments paid into revolving loan fund.

The City of Milpitas received a phase one allocation of CDBG-CV in the amount of \$397, 911. In accordance with HUD guidelines, the City allocated these funds to prevent, prepare for, or respond to the Coronavirus pandemic.

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

	One-Year Goal	Actual
Number of Homeless households to be provided affordable housing units	0	0
Number of Non-Homeless households to be provided affordable housing units	0	0
Number of Special-Needs households to be provided affordable housing units	0	0
Total	0	0

Table 5 – Number of Households

	One-Year Goal	Actual
Number of households supported through Rental Assistance	55	63
Number of households supported through The Production of New Units	0	0
Number of households supported through Rehab of Existing Units	188	192
Number of households supported through Acquisition of Existing Units	0	0
Total	243	255

Table 6 – Number of Households Supported

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

The City has been able to meet its goal to provide rehabilitation funding for affordable housing projects. Two separate apartment complexes in Milpitas received funding for improvements. (1) Terrace Gardens, is a deed restricted very low- and low-income senior housing development. And (2) the Sunnyhills Apartments contains 171 units, of which 149 are under a project based rental assistance contract through HUD. These units are leased to individuals who earn 80% AMI or less.

At this time, the high cost of land in the City has been an obstacle in developing affordable housing projects. While we have affordable units in the pipeline, funding for such projects is extremely competitive and limited. Similarly, the appetite for developing housing for homeless persons is very low, and will require a deeper funding commitment from the County and State.

Discuss how these outcomes will impact future annual action plans.

The goal of creating more affordable housing will continue to be a goal in future action plans. However, the increasingly high cost of construction coupled with surging land costs have made the creation of deeply affordable housing (low, very-low, and extremely-low income) very challenging.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

Number of Households Served	CDBG Actual	HOME Actual
Extremely Low-income	58	0
Low-income	5	0
Moderate-income	0	0
Total	63	0

Table 7 – Number of Households Served

Narrative Information

See above

CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

In October 2019, the City created a Pilot Rent Relief Program and allocated \$100,000 from the City's Affordable Housing Fund to assist the City's at-risk population to prevent eviction, displacement, and to provide financial support for other critical housing needs. In March 2020, with the onset of the COVID-19 pandemic, the City allocated an additional \$100,000 from the Affordable Housing Fund to assist those who had been affected by the pandemic and whose housing situations were at risk. With these funds, the City assisted in the prevention of 40 households and 140 Milpitas residents from potential eviction.

In December 2020, the City began a pilot program with Project WeHope to administer their Dignity on Wheels Mobile Shower and Laundry program in the City. While not funded with CDBG funding, it demonstrates the City's commitment to providing the unhoused community with services.

Additionally, the City contracted with the Santa Clara County Office of Supportive Housing to provide assessment services to the unhoused via the Homeless Engagement and Assessment Team (HEAT). The HEAT team, contracted through Abode Services, provides ongoing outreach and assessment services to the unhoused community in Milpitas.

Addressing the emergency shelter and transitional housing needs of homeless persons

The City continues to work closely with the County Continuum of Care and the Santa Clara County Office of Supportive Housing to address the emergency shelter and transitional housing needs of our homeless residents. In the next fiscal year, the City will report that they have formalized an outreach and assessment agreement with the County of Santa Clara to provide on-site case management, assessment, and referral to other services to help house our homeless population.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

At this time, the City continues to work closely with the County Continuum of Care to provide resources to the unhoused community.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

As noted above, the City contracted with the Santa Clara County Office of Supportive Housing to provide assessment services to the unhoused via the Homeless Engagement and Assessment Team (HEAT). The HEAT team, contracted through Abode Services, provides ongoing outreach and assessment services to the unhoused community in Milpitas.

CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

This is not applicable, there are no public housing developments in the City of Milpitas.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

Not applicable.

Actions taken to provide assistance to troubled PHAs

Not applicable.

CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

Resolution No. 8523

The City adopted Resolution No. 8523 on February 2, 2016, which recognizes homelessness as a crucial problem in the County and will help contribute to future affordable housing projects that will house homeless.

Affordable Housing Ordinance 297

In June 2018, the City Council passed Affordable Housing Ordinance 297 which requires all new residential development projects of 10 units or more designed and intended for permanent occupancy shall construct 15% of the total number of dwelling units within the development as affordable units.

Housing Opportunity Zone

The project will establish a new 'overlay district' within established critical priority areas of Milpitas and complete the associated California Environmental Quality Act (CEQA) analysis to accelerate housing production in the City. The Housing Opportunity Zone (HOZ) will provide objective standards and incentives to developers to encourage and support the development of by-right, affordable, and supportive housing projects, including housing for special-needs residents.

The project would streamline housing approvals and accelerate housing production by providing clarity and certainty to developers to stimulate development in priority areas. Incentives to developers may include reduced parking requirements, additional density bonuses beyond the State Density Bonus, increased allowable heights, streamlined permitting processes, and fee waivers.

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

As noted above, the City contracted with the Santa Clara County Office of Supportive Housing to provide assessment services to the unhoused via the Homeless Engagement and Assessment Team (HEAT). The HEAT team, contracted through Abode Services, provides ongoing outreach and assessment services to the unhoused community in Milpitas. **Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)**

Historically, the County of Santa Clara has received funding from State's Department of Health Service and Federal Government for Center for Disease Control to implement a Childhood Lead Poisoning Prevention Program. The funded programs include: community outreach screen, case

management and public education to inform low-to-moderate income and older communities. The project will then follow up with environmental testing, lead-based education, blood-lead testing for children, hazard reduction grants and follow up with monitoring and testing. Milpitas has adopted a Lead-Based Paint Management Plan which complies with HUD Based Paint regulations, which outlines the required states of abatement and remediation for rehabilitation projects. In addition the City publicize, and identifies lead-based hazards and older residential projects through its Code Enforcement Division and Building Department. In addition, projects undergoing rehabilitation, especially under the City's Rehabilitation Loan Program, is supported through abatement and technical assistance of how to proceed with mitigating lead based paint hazards.

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

The City of Milpitas prioritized the needs of microenterprises during the pandemic. These businesses were hit especially hard during the pandemic and in partnership with the Enterprise Foundation, the City was able to award 38 microenterprises with \$5,000 grants to help maintain and support their businesses during this unique period of economic hardship.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

The City is striving to improve intergovernmental and private sector cooperation to synergize efforts resources and develop new revenues for community service needs and the production of affordable housing. Continued collaborative efforts include:

Regular quarterly meetings between entitlement jurisdictions at the CDBG Coordinators meeting.

Meet with Regional Housing Working Group

Joint jurisdiction Request for Proposals and project review committees

Coordination on project management for projects funded by multiple jurisdictions

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

The City benefits from a strong jurisdiction and region-wide network of housing and community development partners, such as the County and the CoC. To improve intergovernmental and private sector cooperation, the City will continue to participate with other local jurisdictions and developers in sharing information and resources.

Identify actions taken to overcome the effects of any impediments identified in the

jurisdictions analysis of impediments to fair housing choice. 91.520(a)

The City continues to provide funding for Project Sentinel, who the City contracts for fair housing issues. Project Sentinel is a private, non-profit agency providing fair housing, tenant-landlord counseling, and dispute resolution services. Additional services include counseling, case intake, education, and outreach. Other services include HUD-certified mortgage default counseling and First-Time Homebuyer workshops are open to Milpitas residents.

CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

The City of Milpitas Housing Division ensures all funded organization are in compliance and meet financing and programmatic requirements of HUD. Each organization is required to submit quarterly reports of their projects and how close it is to meeting their goals listed in the contracts with the City.

In addition the organization must submit invoices for reimbursements that documents what services have been rendered. In addition of monitoring of CDBG funding, HUD's CDBG 1.5 Timeliness Requirement requires that the City have no more than 1.5 times its entitlement grant allocation in its account.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

As described in the City's approved Citizen Participation Plan, the CAPER was made available in the Public Library, City's Website, City Hall and per request via email to the public for public comment for 15 days. A public notice was published in the Milpitas Post on August 27, 2021 and the City website on September 3, 2021. Due to the ongoing COVID-19 pandemic, the public is encouraged to comment via email to staff.

No public comments were made during the period for public comments.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

There are no changes in objectives of the program.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

There are no changes in objectives of the program.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive a Report and Provide Direction to Staff Regarding Goals and Policies in the Milpitas General Plan that Call for Preparation of a Specific Plan in the California Circle Area to Address Issues Related to Land Use Compatibility, Traffic Circulation, Public Safety, Open Space, etc. in Relation to Conceptual Plans for Proposed Development of up to 206 Multi-family Residential Units on a 6.69-acre Site Located at 1355 California Circle (APN: 22-338-007)
Category:	Community Development
Meeting Date:	9/21/2021
Staff Contact:	Ned Thomas, Planning Director, 408-586-3273 Rozalynne Thompson, Senior Planner, 408-586-3278
<u>Recommendation:</u>	Staff recommends that the City Council: 1. Receive presentations from staff and the applicant; 2. Receive public comment; and 3. Restate and Affirm the City Council's Prior Direction to Staff to prepare a Specific Plan for the California Circle area to address issues related to land use compatibility, traffic circulation, public safety, open space, etc., as outlined in the Milpitas General Plan, and direct staff to provide comments on the Preliminary Review Application consistent with the General Plan Land Use Goal LU-2, Land Use Policy LU2-1, and Land Use Action LU-2b.

Introduction:

The project applicant (Pulte Homes) submitted a Preliminary Review Application (File No. P-PP21-0001) to receive comments from City staff and general feedback from the City Council on their proposal to develop 206 multi-family residential units on a 6.69-acre site located at 1355 California Circle (the "Project"). The proposed development would include 45 traditional townhome units (three stories with three bedrooms), 86 stacked townhome units (four stories with two to three bedrooms), and 75 senior or below-market-rate (BMR) units (four to five stories with studios or one bedroom). The pre-application process allows the applicant to obtain feedback from staff prior to formal submittal. In this case, City Council direction is needed because the proposed project is contrary to the goals and policies for development in the California Circle area, as outlined in the Milpitas General Plan. The City's pre-application process provides the Council with an opportunity to affirm its previous direction for land use planning in the California Circle area in relation to conceptual plans for the proposed project.

Background:

The applicant submitted preliminary project plans to the Planning Department on May 17, 2021. Project plans were circulated to internal departments for review and comment and, on June 11, 2021, City staff sent a letter to the applicant outlining potential issues raised by the Project, including those related to land use compatibility, development standards in the Zoning Code, affordable housing, and development standards, and fire code compliance.

Given that the Project would require, at minimum, a General Plan Amendment, Zoning Map Amendment, Site Development Permit, Conditional Use Permit, Tentative Tract Map, and environmental review under the California Environmental Quality Act (CEQA), this agenda report has been drafted to solicit feedback from

City Council on larger land use planning and compatibility issues in the California Circle area. The Council discussed California Circle at length during the recent General Plan Update process, and the Milpitas General Plan calls for preparation of a Specific Plan in this area to address issues such as land use compatibility, traffic circulation, public safety, and open space, etc. (see Land Use Goal LU-2, Land Use Policy LU2-1, and Land Use Action LU-2b). As part of the preliminary review process, the Council may wish to comment on the design of the proposed project as well as its compatibility within context of surrounding uses within the California Circle area.

Site Location:

The Project site is an irregularly-shaped, approximately 6.69-acre property located along California Circle, approximately 0.5 mile south of Dixon Landing Road. The Project site is located near the southernmost point of California Circle as it curves to the east and eventually crosses Lower Penitencia Creek and connects to Milmont Drive.

The site is bounded by Interstate I-880 to the west, industrial office complexes to the north and south, and a large assembly use known as BAPS Shri Swaminarayan Mandir (“BAPS”) to the west. As for the site immediately south, in 2018, a Site Development Permit, Conditional Use Permit, Tentative Parcel Map, and Initial Study/Mitigated Negative Declaration pursuant to CEQA was approved to demolish the existing industrial warehouse structure and construct and operate a 150-room, five story, extended stay hotel. Residential uses, including 148-unit townhouse development and an 84-unit single-family residential development, and recreational open space uses also located nearby on the other side of California Circle. Building heights within the surrounding properties vary by land use from one to three stories. Newby Island Landfill, the Zanker Road Landfill and Compost Facility, and the treatment lagoons of the San José/Santa Clara Water Pollution Control Plant (WPCP) are all located on the west side of I-880, approximately .75 mile, 2.2 miles, and 0.25 miles, respectively, from the western edge of the Project site.

The Project site is currently developed with an industrial office building, associated improvements, including parking lots to the east, west, and north of the building and landscaping with a large number and variety of ornamental trees. Access to the site is currently provided by a two curb cuts along California Circle that connects to the surface parking lot areas. The site has been vacant for several years.

Analysis:

General Plan Policy

The City Council adopted the new Milpitas General Plan on March 9, 2021. Prior to adoption of the General Plan, on May 21, 2019, the City Council received a Land Use Alternatives report from City staff and the project consultant. During City Council discussion on the matter, the Council reviewed areas on the final land use map that are transitioning from industrial to residential and mixed use, including the California Circle area. The Council discussed at length the limitations and possibilities for the area, especially limitations regarding parking and traffic and the potential to expand entertainment, restaurants, and performing arts uses in close proximity to the new hotels. Additionally, the City Council stated that limited residential uses might be possible as part of any mixed-use developments. Staff recommended that a specific plan be prepared to address significant traffic circulation, access, and safety issues identified in the area and to implement a more coherent vision and development policies for the area.

The newly adopted General Plan identifies the California Circle area as a potential specific plan area. Further, land use policy LU-2b specifically directs City staff to prepare and City Council to adopt a specific plan that addresses the following:

- inclusion of a mix of commercial, office, and industrial park uses, with opportunities for additional residential development in a primarily mixed-use format;
- incentives and provisions for residential density increases for projects with significant affordable housing components;
- improvements to the circulation network, including improved ingress and egress, improved bicycle and pedestrian connectivity, and improved access to trails and linear parkways;
- the provision of new parks and community amenities, including additional open spaces and trails;

- design standards for improved landscaping, lighting and streetscapes;
- funding mechanisms to ensure implementation of roadway, infrastructure, and other public improvements shall be established; and
- potential risks to infrastructure and public safety due to flooding or other natural disasters.

Given that a specific plan has not yet been completed in the area, development projects that are submitted prior to adoption of a California Circle specific plan could be contrary to the objectives and policies of the updated General Plan and future specific plan.

General Plan and Zoning Designation for Project Site

Section 65860(a) of the Government Code requires that the zoning ordinance is consistent with the General Plan. The subject property is located in the Industrial Park (MP) zoning district. The former land use designation for the subject site under the General Plan was Industrial Park (IP), which was a classification that accommodated research, professional, packaging and distribution facilities in a park-like setting, free from noise, odor and other such nuisances. Residential uses are not allowed in either the MP zoning district or the IP General Plan land use designation.

However, under the recent General Plan update, the land use classification has been changed to Neighborhood Commercial Mixed-Use (NCMU), which is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use, and residential uses, hotel, and office development allowed on a limited basis. The NCMU designation encourages active neighborhood serving uses at the ground level, including grocery stores, specialty retail, restaurants, plazas, or walk-in personal services such as banks and salons. Therefore, the current zoning designation of MP, which does not allow residential development, is inconsistent with recently updated General Plan land use designation of NCMU.

To move forward with the Project, a Zoning Map amendment would be required to bring the zoning designation in conformance with the General Plan NCMU land use designation.

Access and Traffic Circulation

The site would be directly accessed from California Circle. California Circle is the main thoroughfare that provides vehicular access from existing and proposed development to Dixon Landing Road. Existing pedestrian access to the site is provided by a series of sidewalks and crosswalks on California Circle. Bike lanes provide direct access to the Project site on California Circle and Milmont Drive. As for public transportation, current transit service in the Project vicinity consists of one bus route operated by VTA and one by AC Transit. The closest bus stops are located at the intersection of Dixon Landing Road and Milpitas Boulevard, approximately one mile away from the Project site.

As the only vehicular ingress and egress to the area is provided by California Circle, the Action LU-2b in the General Plan directs that the specific plan for the area Identify improvements to the circulation network, including improved ingress, improved bicycle and pedestrian connectivity, and improved access to trails and linear parkways. If entitlements for the Project are submitted prior to the preparation for a specific plan for the area, staff recommends that the applicant consider including public improvements to the circulation system as part of the proposal. Needed public improvements would likely include new sidewalks and streetscape improvements, landscaping, signalized crosswalks, protected bike lanes, and wayfinding signage and trail connections.

Moreover, the proposed Project would be more appropriate near transit, as it is anticipated that the site would generate high vehicular miles travelled (VMT). The General Plan encourage this type of development in areas of the City with better transit connections. However, the site's access to the I-880 freeway underscores its high value for commercial, office, hotel, or other non-residential uses.

Odor from the Nearby Landfill

The Project site is located near several significant sources of odors including the Newby Island Landfill and Compost Facility, the Zanker Road Landfill and Compost Facility, and the San Jose/Santa Clara Water Pollution Control Plant (WPCP). These land uses have been identified as the source of frequent odor complaints and if the Project were to move forward, additional residents would be subjected to the odor, which could lead

additional complaints. Conditions of approval for residential projects adjacent to the Project site have included notifying potential residents in writing of possible odor impacts as part of buyer disclosures or lease/rental agreements. Staff will recommend that a similar condition be imposed on the Project should a formal application be submitted.

Noise and Air Quality

Due to the proximity of the Project site to the I-880 freeway, residents would be exposed to significant noise and toxic air contaminants (TACs) generated by vehicles travelling on the freeway. An average of 222,600 vehicles travel I-880 Dixon Landing Road segment daily. Increased cancer risk is associated with increased exposure to TACs. When the Project is fully built out and occupied, future households with small children or elderly residents will be sensitive receptors, exposed to ambient levels of toxic air contaminants (TACs) generated by vehicles travelling on the nearby I-880 freeway and other existing stationary sources. Staff recommends that a health risk assessment is prepared during the environmental review process to assess the cancer risk to sensitive receptors.

Loss of Prime Commercial Land

The Economic Development Department has prepared an Economic Development Strategy, which outlines a plan to ensure and foster relationships among the City's businesses that generates sales tax revenues for the City. California Circle offers businesses great visibility from I-880 as well as industrial space that meets the demand of the business community. The Economic Development Department acknowledges that the site is situated within an industrial and commercial zone that includes such uses as manufacturing, lodging, educational, and community services and solely allowing residential development at the site removes an opportunity for commercial and industrial uses. The Economic Development Department suggests that the applicant should explore limited residential development within a mixed-use format that includes a significant commercial component consistent with the City's new General Plan and Economic Development Strategy.

Affordable Housing

The Project proposes 75 senior or below market rate (BMR) apartment units, which would comprise 36 percent of the number of units. While it is commendable that Project includes some affordable units, City Council gave specific direction during its discussion of the General Plan update to encourage mixed-use development, with commercial uses as primary uses and affordable housing as a secondary use, in the California Circle area. As an entirely residential Project, this Project is contrary to the direction given by City Council in its past discussions.

Further, as proposed, the Project does not comply with the City's Affordable Housing Ordinance, which requires that affordable units are not distinguished from market rate units by exterior design, construction, or materials. The current conceptual plan does not meet the design and distribution requirements of the City's Affordable Housing Ordinance. The BMR units must be distributed across the site rather than concentrated in one area or building, and the mix of units must include a mix of unit sizes. As the proposed plan is conceptual, these types of specific design issues would require further consideration and review in response to a formal submittal from the applicant.

California Environmental Quality Act:

Upon submittal of a formal application, the Project will be subject to the California Environmental Quality Act (CEQA). After the application is complete, staff will prepare an Initial Study to determine whether the Project will have a significant impact on the environment. The Initial Study will determine the type of environmental review document required (i.e. Mitigated Negative Declaration or Environmental Impact Report). Where significant impacts are identified, project mitigation will be required. Detailed mitigation measures will be identified based on the project specific proposal.

Fiscal Impact:

This item is a Preliminary Review discussion of a conceptual project. No fiscal impacts.

Public Comment:

Staff has received three comments generally in support of the Project (Attachment 3). To note, the proposed Project is conceptual and that site design, number and size of units, and percentage of affordable units are open to additional discussion.

Recommendation:

Staff recommends that the City Council:

1. Receive presentations from staff and the applicant;
2. Receive public comment; and
3. Restate and Affirm the City Council's Prior Direction to Staff to prepare a Specific Plan for the California Circle area to address issues related to land use compatibility, traffic circulation, public safety, open space, etc., as outlined in the Milpitas General Plan, and direct staff to provide comments on the Preliminary Review Application consistent with the General Plan Land Use Goal LU-2, Land Use Policy LU2-1, and Land Use Action LU-2b.

Attachments:

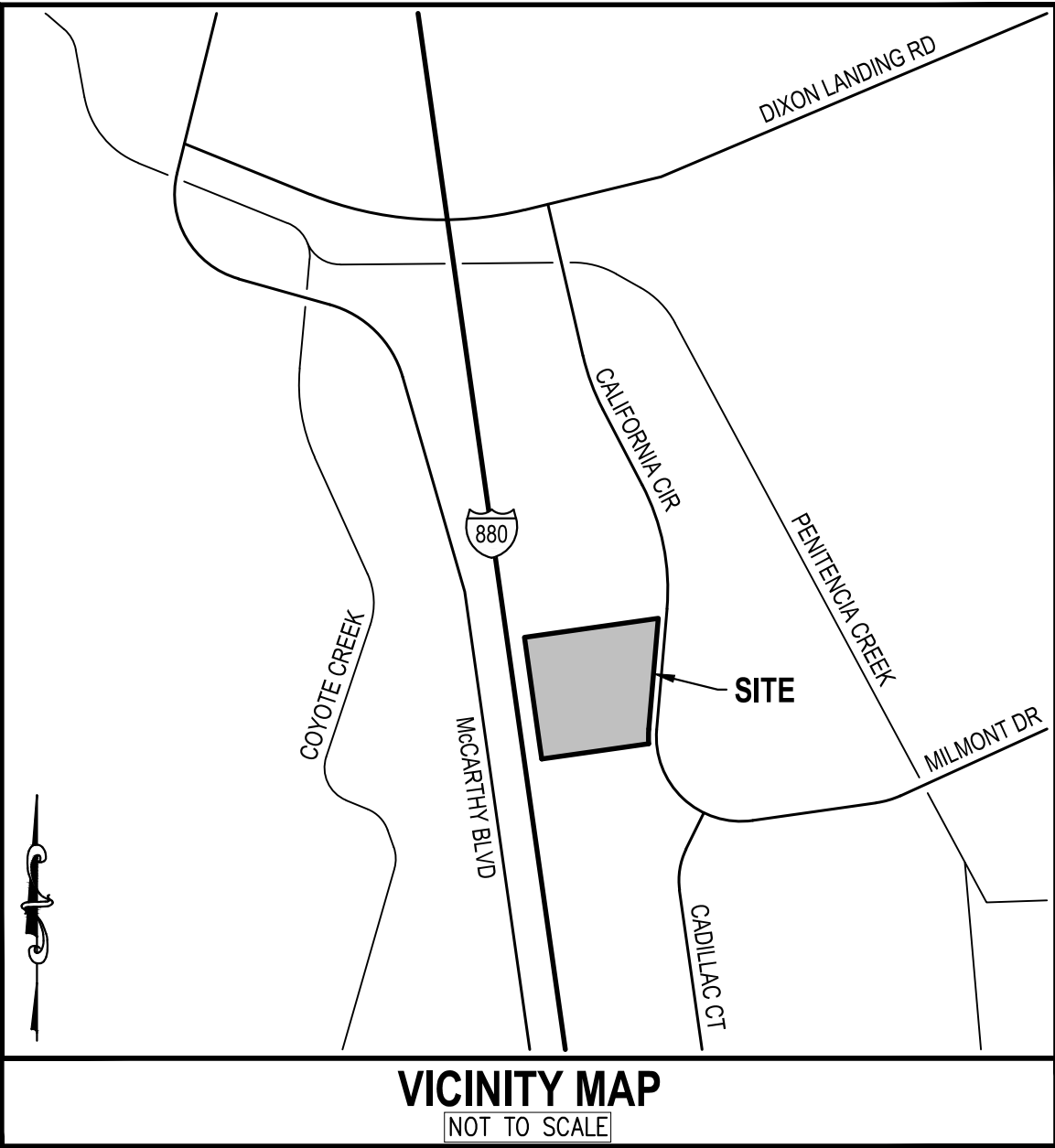
1. Preliminary Development Plans for Proposed Multi-Family Residential Project
2. Letter from Alex Andrade, Director of Economic Development, dated June 11, 2021
3. Comment letters from the Public, received September 16, 2021 and September 17, 2021

PRELIMINARY

1355 CALIFORNIA CIRCLE

MILPITAS

CALIFORNIA



SHEET INDEX	
C0	TITLE SHEET
C1	EXISTING CONDITIONS PLAN
C2	SITE PLAN
C3	ALTERNATE SITE PLAN
A-1.1	LIVE/WORK TOWNHOME STYLE CONDOS
A-1.2	LIVE/WORK TOWNHOME STYLE CONDOS
A-1.3	LIVE/WORK TOWNHOME STYLE CONDOS
A-2.1	STACKED TOWNHOME STYLE CONDOS
A-2.2	STACKED TOWNHOME STYLE CONDOS
A-2.3	STACKED TOWNHOME STYLE CONDOS
A-3.1	TOWNHOME STYLE CONDOS
A-3.2	TOWNHOME STYLE CONDOS

- NOTES
1.

ASSESSOR'S PARCEL NUMBER: 022-38-007
2.

LEGAL DESCRIPTION:

REAL PROPERTY IN THE CITY OF MILPITAS , COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL D, SO DESIGNATED AND DELINEATED ON THE PARCEL MAP RECORDED JUNE 6, 1983 IN BOOK 513 OF MAPS, AT PAGES 31 AND 32, SANTA CLARA COUNTY RECORDS.

EXCEPTING THEREFROM "ONE-SIXTEENTH OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS CONTAINED IN SAID LANDS, AS PROVIDED BY AN ACT OF THE LEGISLATURE, APPROVED MAY 25, 1921 (CHAPTER 303, STATUTES OF CALIFORNIA, 1921)" AS RESERVED TO THE STATE OF CALIFORNIA ACCORDING TO THE PATENT BY THE STATE OF CALIFORNIA TO W.J. WADHAMS, RECORDED JULY 15, 1936 IN BOOK 782, PAGE 292, OFFICIAL RECORDS.
3.

SITE ADDRESS: 1355 CALIFORNIA CIRCLE, MILPITAS, CALIFORNIA
4.

SITE AREA: 6.693 ACRES GROSS & NET
5.

THE SITE IS NOT LOCATED IN A VERY HIGH FIRE HAZARD SEVERITY ZONE.
6.

THE SITE IS NOT LOCATED IN WETLANDS.
7.

THE SITE IS NOT LOCATED IN A HAZARDOUS WASTE SITE DESIGNATED PURSUANT TO SECTION 65962.5 OF THE GOVERNMENT CODE OR SECTION 25356 OF THE HEALTH AND SAFETY CODE.
8.

THE SUBJECT PROPERTY IS SHOWN ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NUMBER 06085C005&J, DATED FEBRUARY 19, 2014, AS BEING LOCATED IN FLOOD ZONE "AH" (EL 15 FEET)".

ZONE AH FLOOD DEPTHS OF 1 TO 3 FEET (USUALLY AREAS OF PONDING); BASE FLOOD ELEVATIONS DETERMINED.
9.

THE SITE IS NOT LOCATED IN A DELINEATED EARTHQUAKE FAULT ZONE AS DETERMINED BY THE STATE GEOLOGIST IN ANY OFFICIAL MAPS PUBLISHED BY THE STATE GEOLOGIST, UNLESS THE DEVELOPMENT COMPLIES WITH APPLICABLE SEISMIC PROTECTION BUILDING CODE STANDARDS ADOPTED BY THE CALIFORNIA BUILDING STANDARDS COMMISSION.
10.

THE SITE IS NOT LOCATED IN A STREAM OR OTHER RESOURCE THAT MAY BE SUBJECT TO A STREAMBED ALTERATION AGREEMENT.
11.

EXISTING ZONING: MP (INDUSTRIAL)
12.

EXISTING GENERAL PLAN DESIGNATION: INP (INDUSTRIAL PARK)
13.

PROPOSED ZONING: TO BE DETERMINED
14.

PROPOSED GENERAL PLAN DESIGNATION: TO BE DETERMINED
15.

SITE DENSITY: 30.7 DU/AC (206 UNITS/6.693 AC)

REQUIRED COVERED PARKING						
TOWNHOMES						
PLAN TYPE	# OF BEDROOMS	COVERED SPACES REQUIRED	COVERED SPACES PROVIDED	TOTAL NUMBER OF UNITS	TOTAL SPACES REQUIRED	TOTAL SPACES PROVIDED
PLAN 1	3	2	2	24	48	48
PLAN 2	3	2	2	21	42	42
				TOTALS	90	90

STACKED TOWNHOMES						
PLAN TYPE	# OF BEDROOMS	COVERED SPACES REQUIRED	COVERED SPACES PROVIDED	TOTAL NUMBER OF UNITS	TOTAL SPACES REQUIRED	TOTAL SPACES PROVIDED
PLAN 1	2	2	2	7	14	14
PLAN 2	3	2	2	15	30	30
PLAN 3	3	2	2	9	18	18
PLAN 4	3	2	2	7	14	14
PLAN 5	3	2	2	15	30	30
PLAN 6	3	2	2	9	18	18
PLAN 7	3	2	2	15	30	30
PLAN 8	3	2	2	9	18	18
				TOTALS	172	172

ASSUMED SENIOR AFFORDABLE						
PLAN TYPE	# OF BEDROOMS	COVERED SPACES REQUIRED	COVERED SPACES PROVIDED	TOTAL NUMBER OF UNITS	TOTAL SPACES REQUIRED	TOTAL SPACES PROVIDED
PLAN 1	0	1	1	50	50	50
PLAN 2	1	1.5	1.5	25	37.5	38
				TOTALS	87.5	88

GUEST PARKING REQUIREMENT (20% OF TOTAL REQUIRED)	
GUEST PARKING (TOWNHOMES AND STACKED TOWNHOMES)	
TOTAL REQUIRED GUEST PARKING = 20% X (90+172)	52.4
TOTAL GUEST PARKING PROVIDED (UNCOVERED)	53

GUEST PARKING (SENIOR AFFORDABLE)	
TOTAL REQUIRED GUEST PARKING = 20% X (88)	17.6
TOTAL GUEST PARKING PROVIDED (IN GARAGE)	18

BY

REVISIONS

NO.

DATE

1

OF

4

SHEET

1355 CALIFORNIA CIRCLE

TITLE SHEET

CALIFORNIA CIRCLE

MILPITAS

PRELIMINARY

CALIFORNIA

4511 Willow Road, Suite 8

PO Box 889

Phone 925/248-5200 Fax 925/485-0291

PulteGroup

2085 Gateway Place

Suite 450

San Jose, CA 95110

T: (408) 453-1066

Civil Engineers • Planners • Surveyors

Civil Engineering Associates

4/16/2021

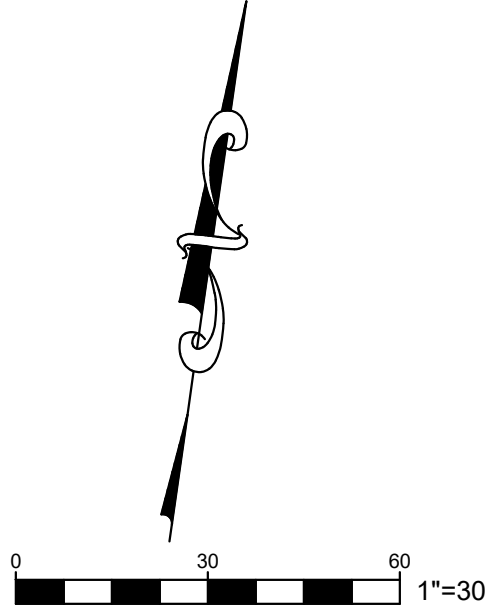
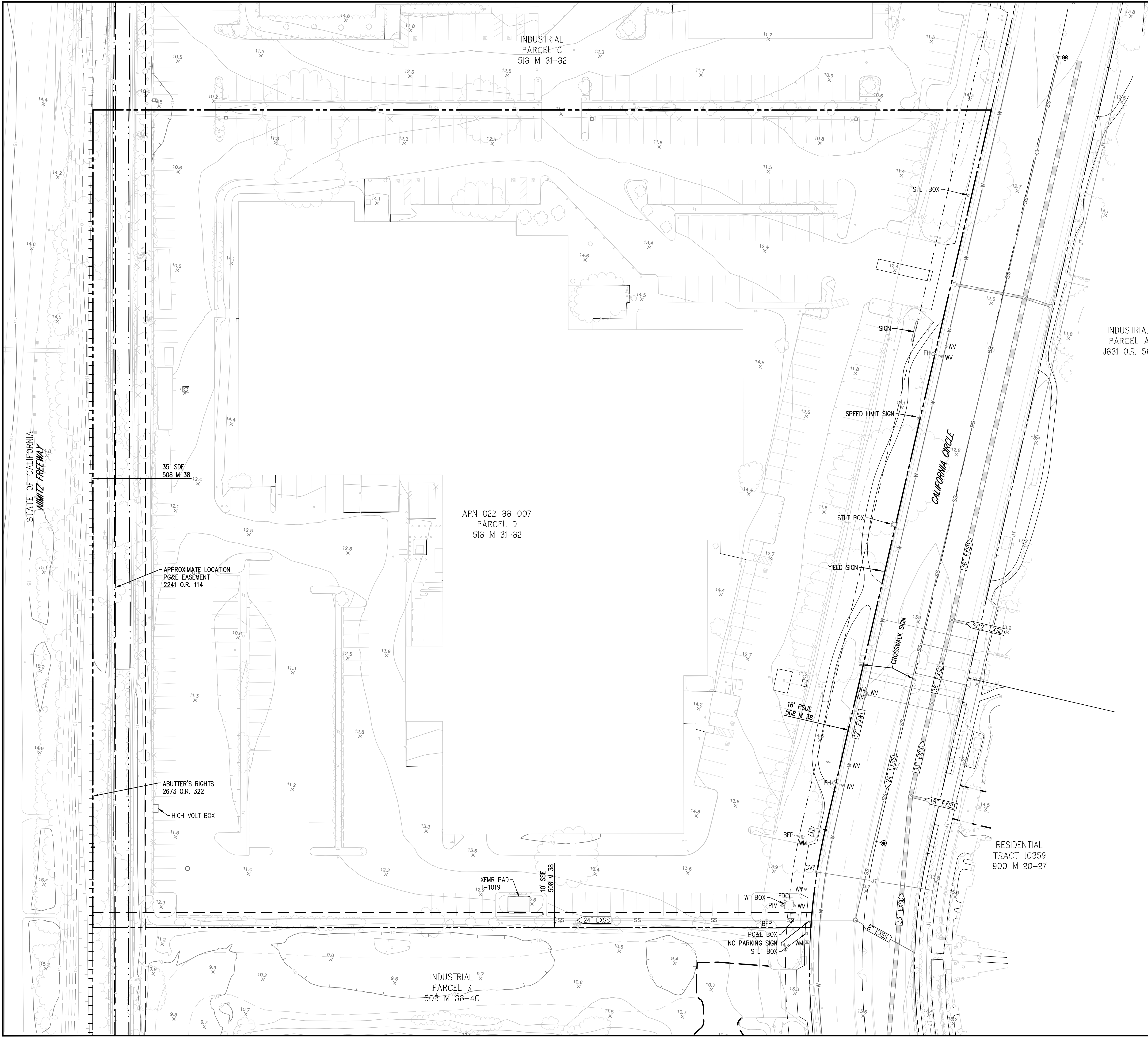
SEE PLAN

JG

CHI

20-158

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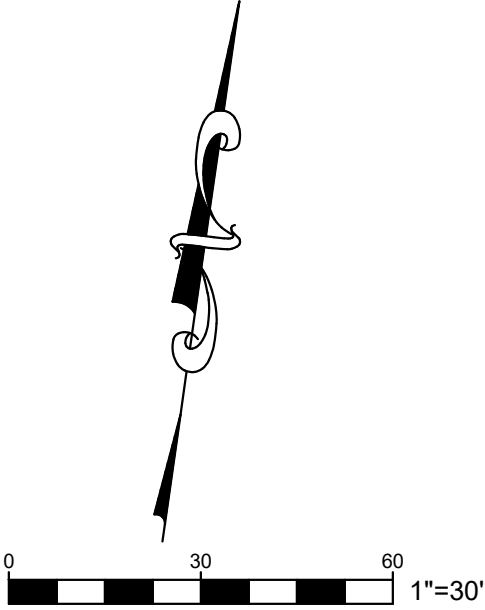
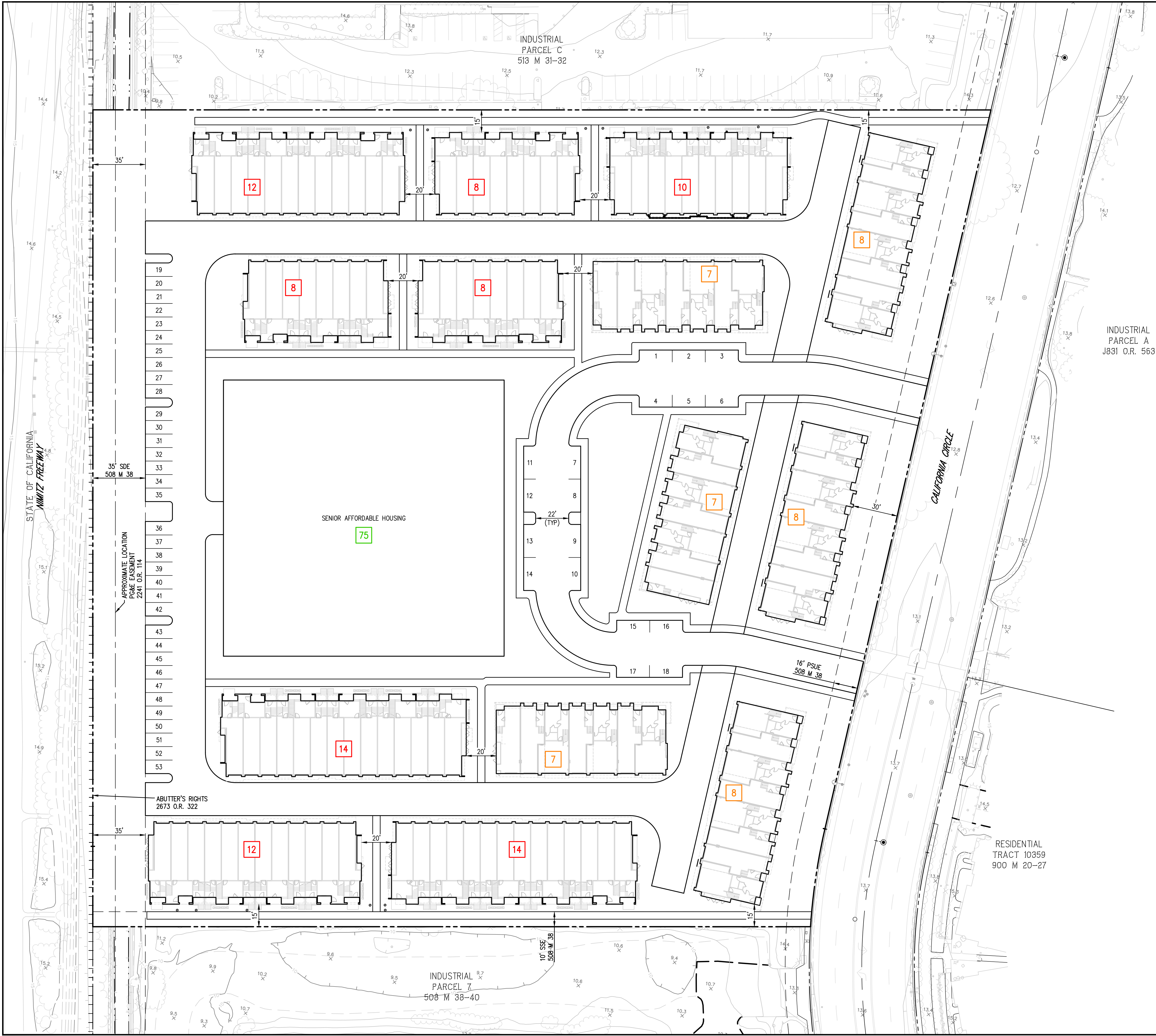
ABBREVIATIONS

ARV	AIR RELIEF VALVE
APN	ASSESSORS PARCEL NUMBER
AD	AREA DRAIN
BFP	BACKFLOW PREVENTER
CB	CATCH BASIN
CLF	CHAIN LINK FENCE
CO	CLEAN OUT
CONC	CONCRETE
FDC	FIRE DEPARTMENT CONNECTION
FH	FIRE HYDRANT
MH	MANHOLE
PIV	POST INDICATOR VALVE
SS	SANITARY SEWER
SD	STORM DRAIN
STLT	STREET LIGHT
VOLT	VOLTAGE
WM	WATER METER
WT	WATER
WV	WATER VALVE

LEGEND

---	BOUNDARY LINE
- - -	RIGHT-OF-WAY
---	LOT LINE
---	CENTER LINE
- - -	EASEMENT LINE
---	BOUNDARY TIE
SS	SANITARY SEWER
SD	STORM DRAIN
W	WATER LINE
FH	FIRE HYDRANT
GW	GAS OR WATER VALVE
STLT	STREET LIGHT
CLF	CHAIN LINK FENCE
IF	IRON FENCE
WF	WOOD FENCE
B	BOLLARD

PREPARED FOR:	PRELIMINARY	1355 CALIFORNIA CIRCLE	EXISTING CONDITIONS PLAN	CALIFORNIA CIRCLE	MILPITAS	CALIFORNIA	DATE	4/16/2021
							SCALE	SEE PLAN
PulteGroup	4511 Willow Road, Suite 8 Milpitas, CA 95110 Phone 925/249-5200 Fax 925/485-0291	Civil Engineering Associates 2055 Gateway Place Suite 550 San Jose, CA 95110 T: (408) 453-1066	Civil Engineers • Planners • Surveyors	DESIGNED	JG			
				DRAWN	CH			
BY	NO.	DATE	REVISIONS	JOB NO.	20-158			
				SHEET	C1			
				2	OF	4	SHEET	327



PROJECT SUMMARY

MARKET RATE HOUSING

7	TOWNHOMES	45
7	STACKED TOWNHOMES	86
TOTAL MARKET RATE UNITS		131

SENIOR AFFORDABLE HOUSING

75	AFFORDABLE UNITS	75
TOTAL UNITS		206

SITE AREA 6.69± ACRES

2055 Gateway Place
Suite 550
San Jose, CA 95110
T: (408) 453-1066

Civil Engineering Associates
Civil Engineers • Planners • Surveyors

4511 Willow Road, Suite 8
Milpitas, CA 95035
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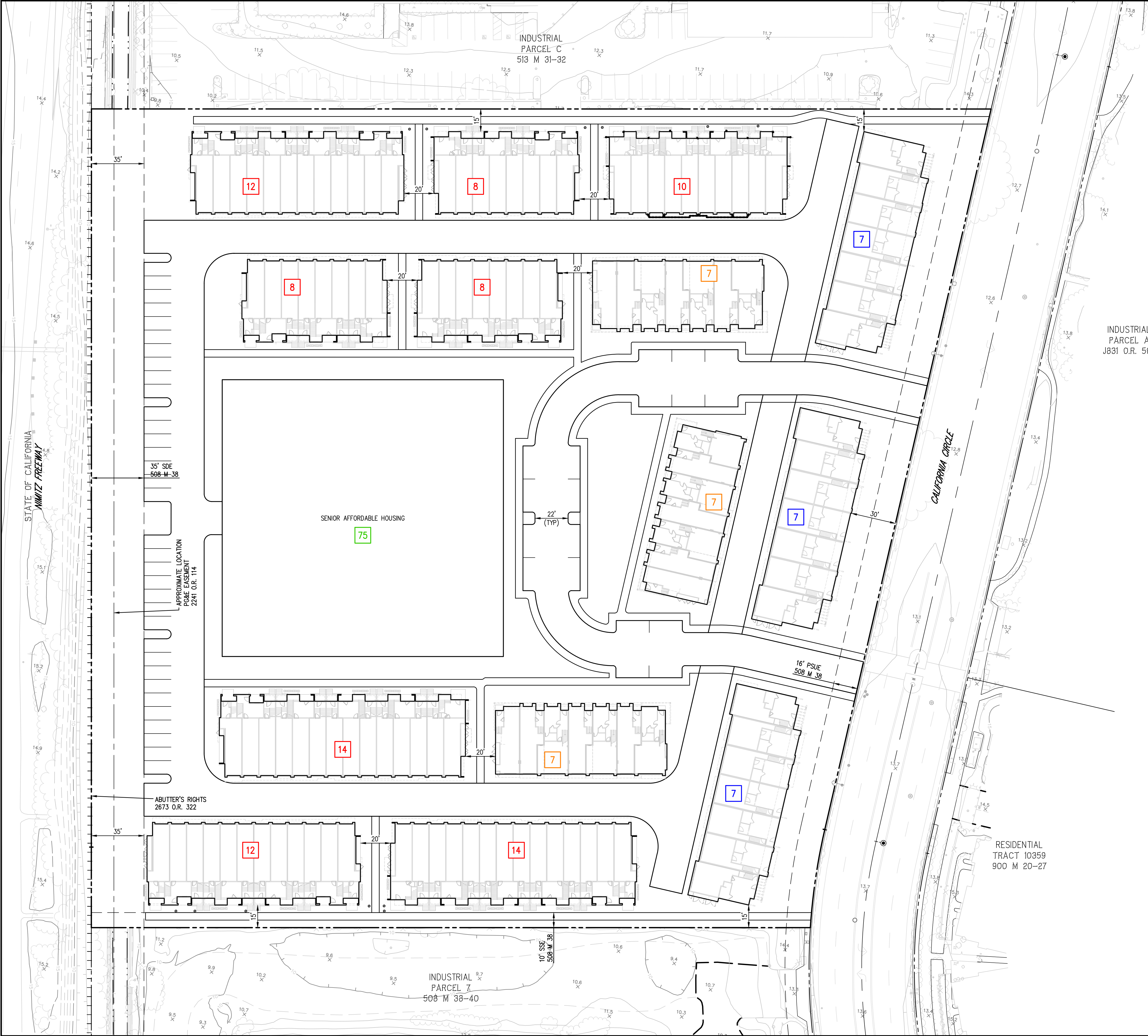
PulteGroup

PREPARED FOR:

1355 CALIFORNIA CIRCLE
MILPITAS
CALIFORNIA

**SITE PLAN
CALIFORNIA CIRCLE**

DATE	4/16/2021
SCALE	SEE PLAN
DESIGNED	JG
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JOB NO.	20-158
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PROJECT SUMMARY

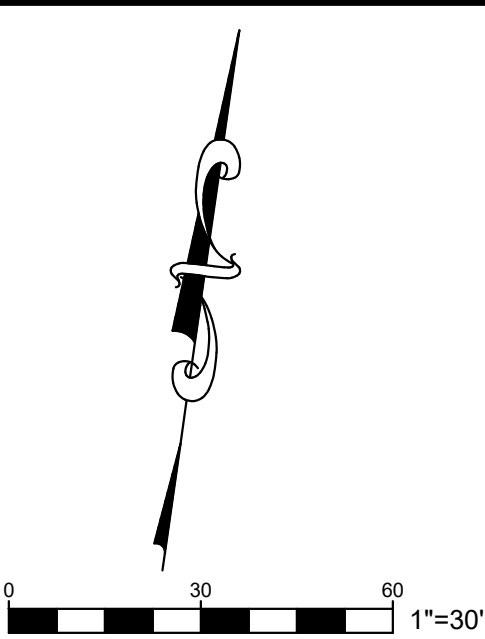
MARKET RATE HOUSING

7	LIVE / WORK TOWNHOMES	21
7	TOWNHOMES	21
7	STACKED TOWNHOMES	86
TOTAL MARKET RATE UNITS		128

SENIOR AFFORDABLE HOUSING

75	AFFORDABLE UNITS	75
TOTAL UNITS		203

SITE AREA 6.69± ACRES



PREPARED FOR:

PRELIMINARY

1355 CALIFORNIA CIRCLE

ALTERNATE SITE PLAN

CALIFORNIA CIRCLE

MILPITAS

CALIFORNIA

Civil Engineering Associates

2055 Gateway Place
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PulteGroup

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Pleasanton, CA 94566
Phone 925/249-5200 Fax 925/485-0291

DATE

4/16/2021

SCALE

SEE PLAN

DESIGNED

JG

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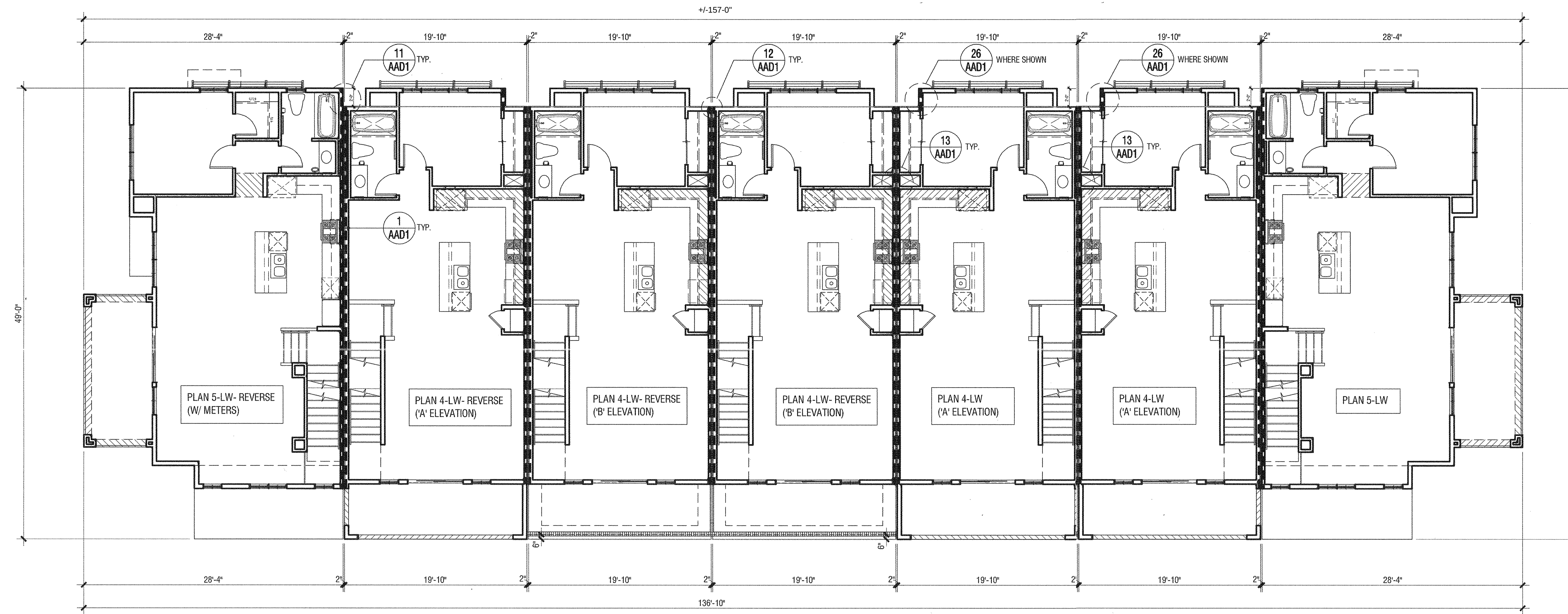
20-158

SHEET

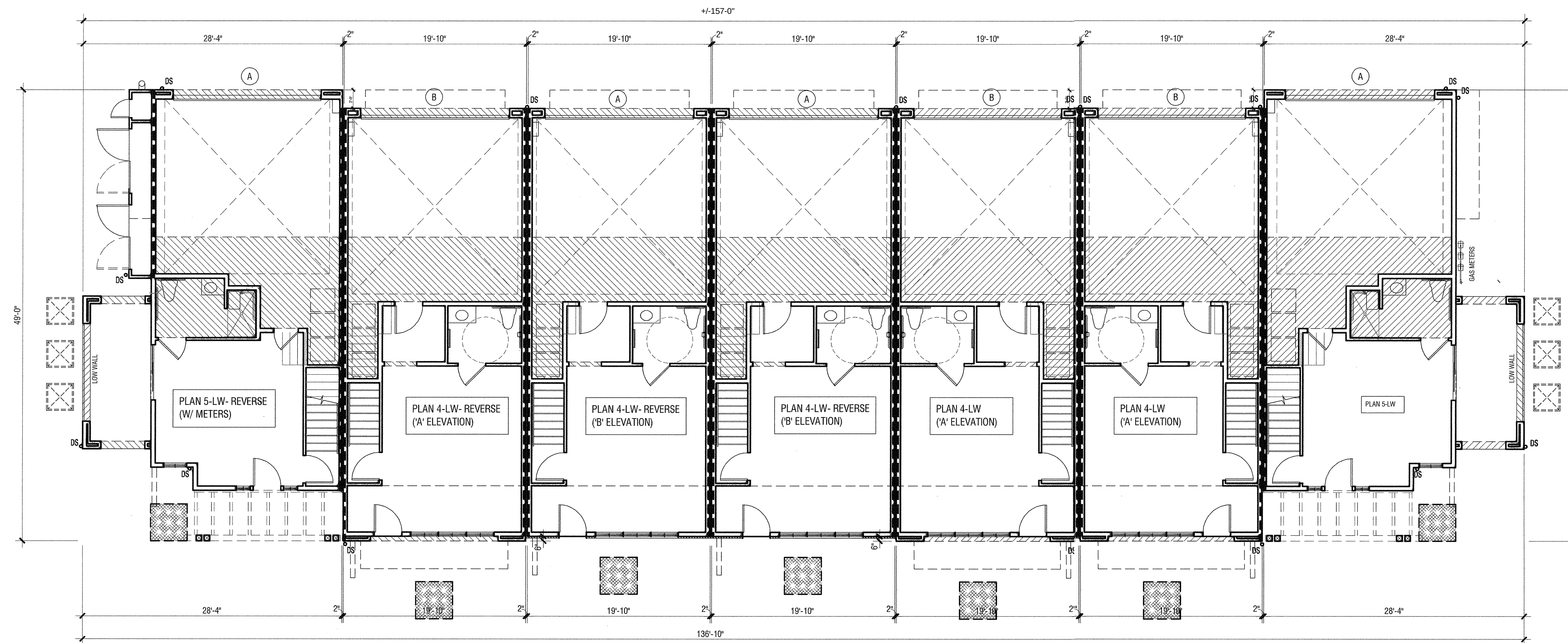
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4 OF 4 SHEETS

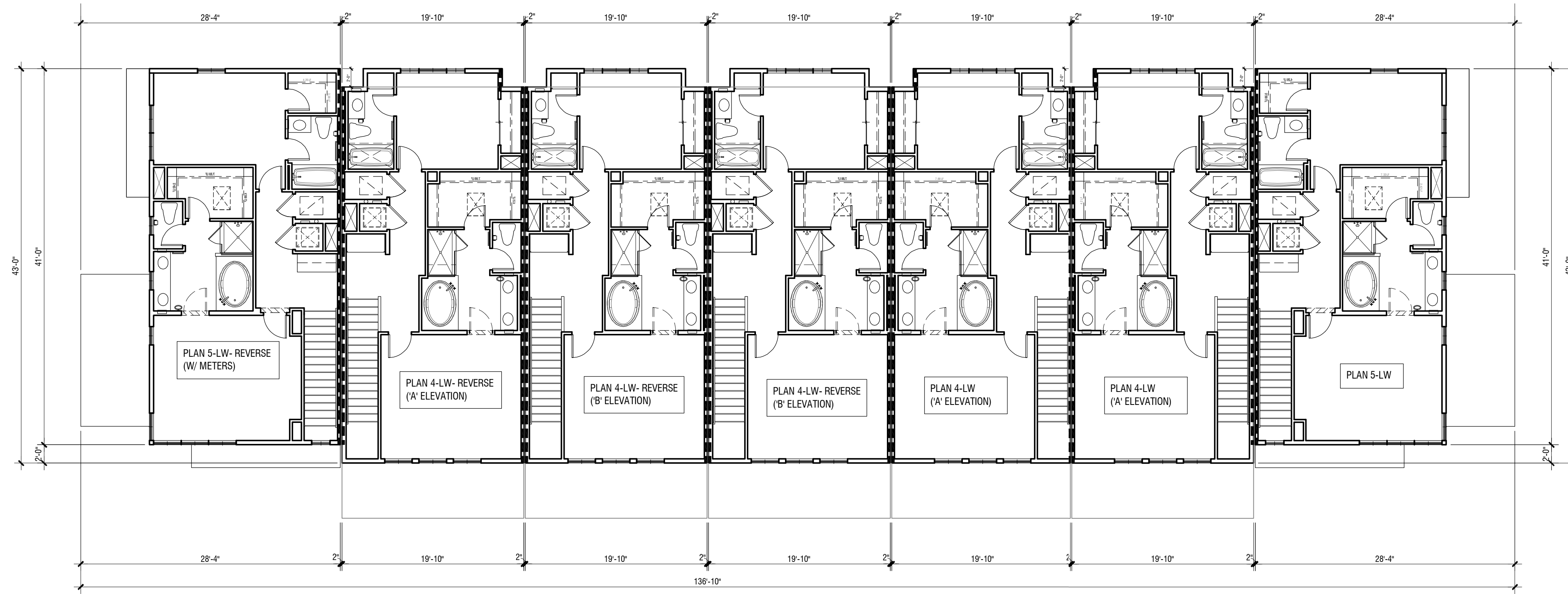
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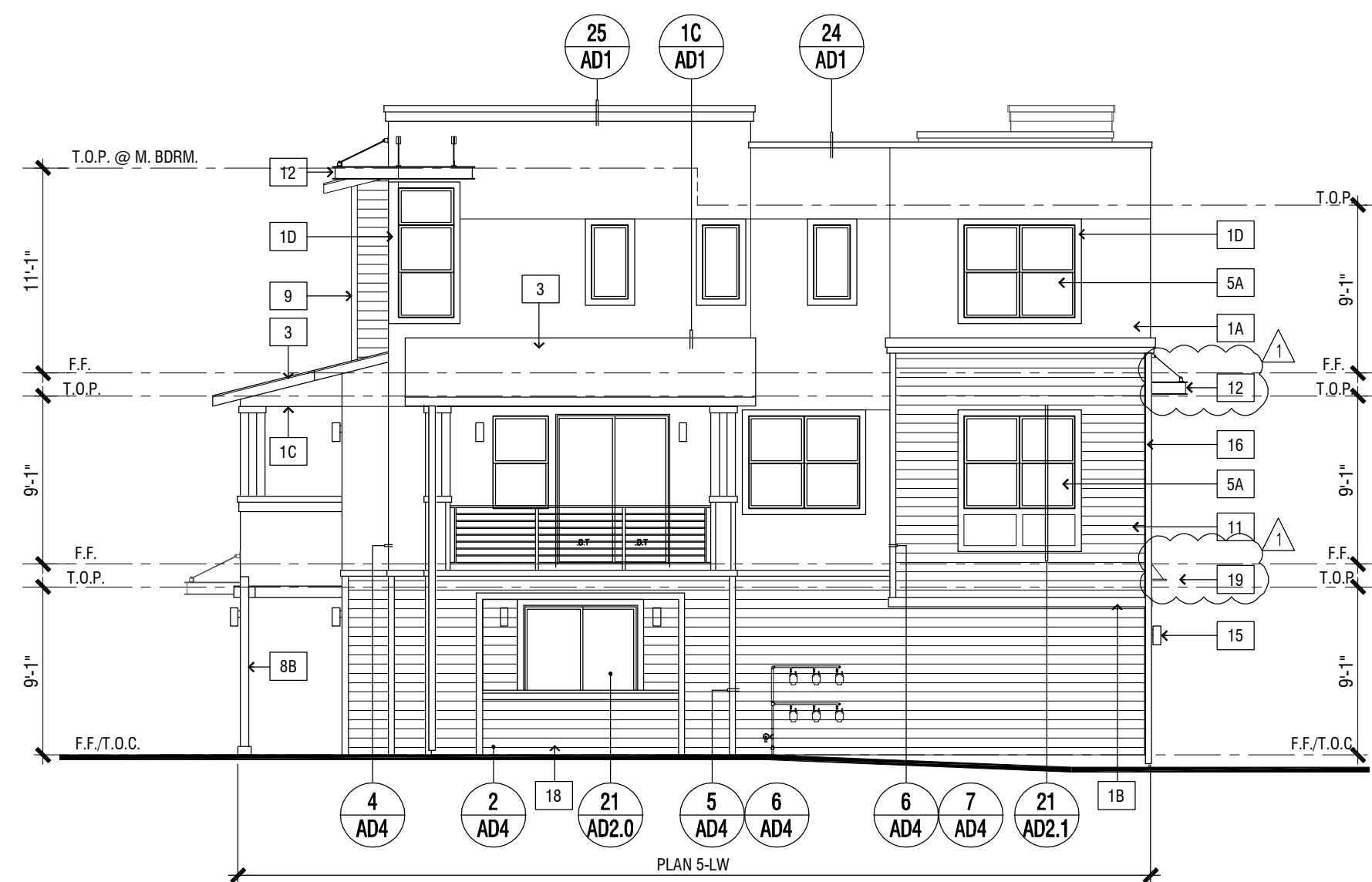
SECOND FLOOR PLAN



FIRST FLOOR PLAN



THIRD FLOOR PLAN



RIGHT



REAR

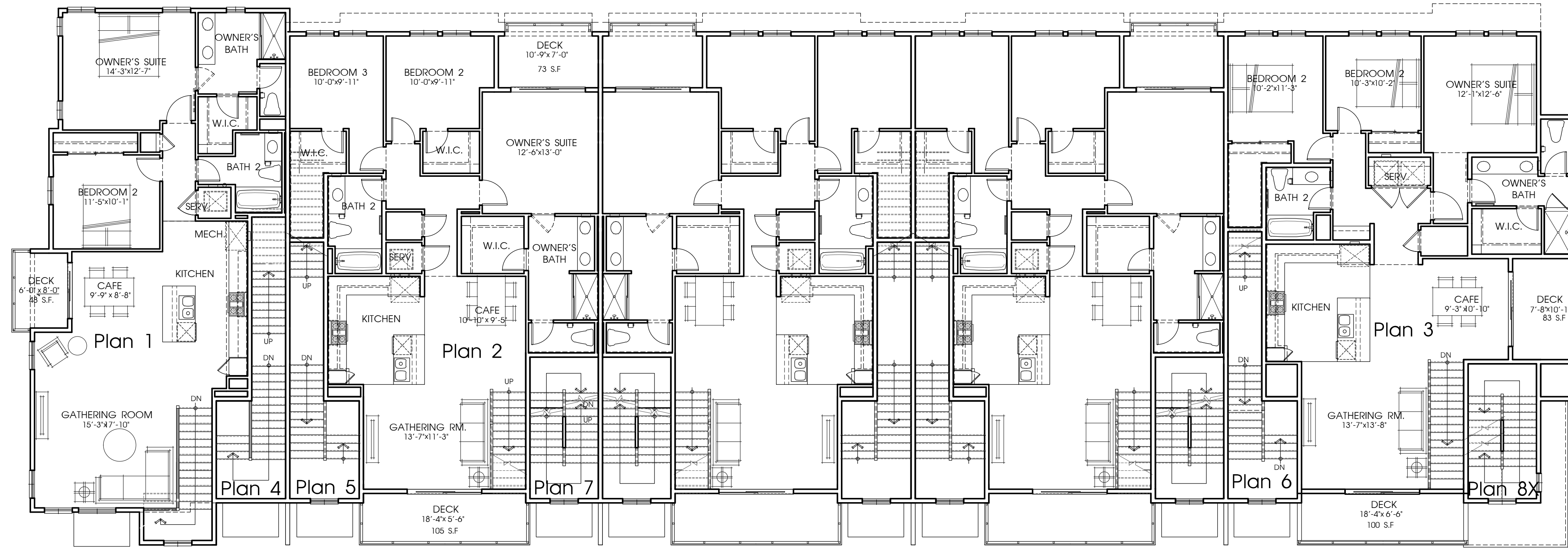


LEFT

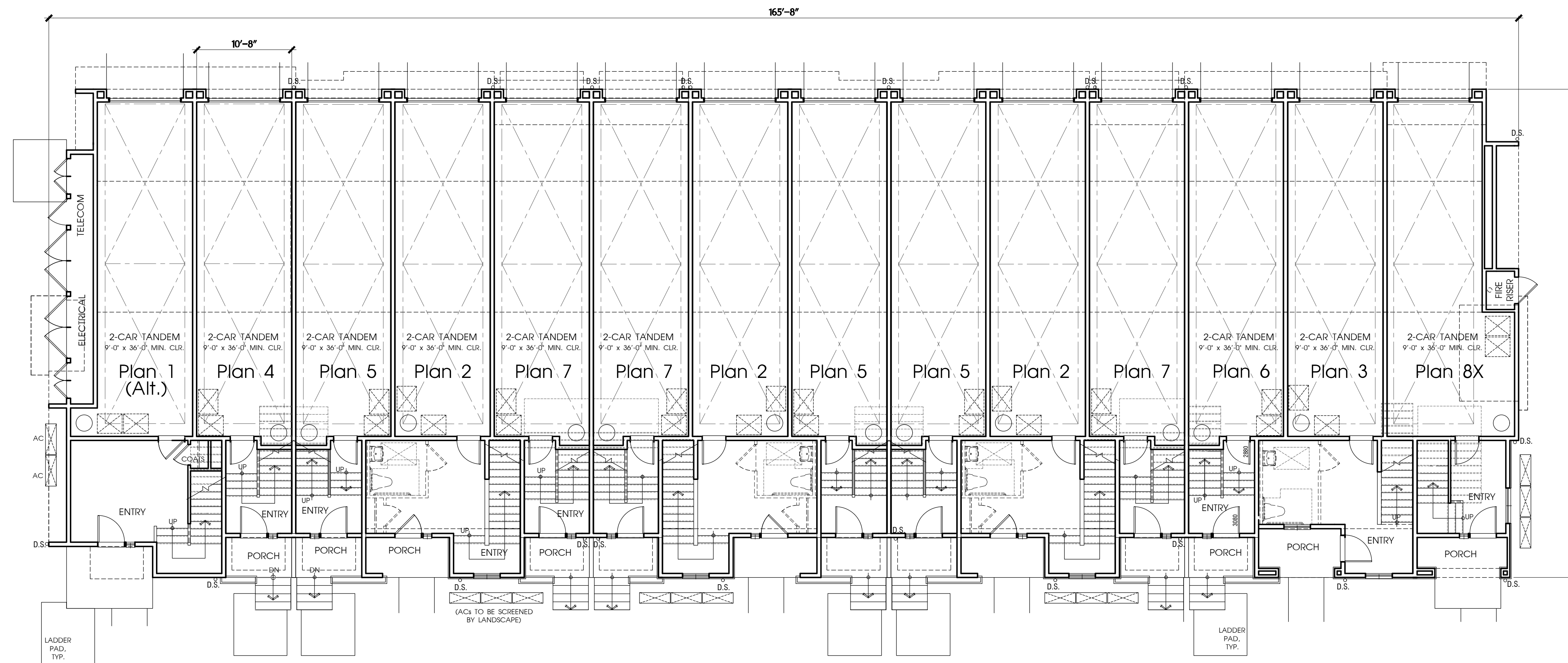


FRONT

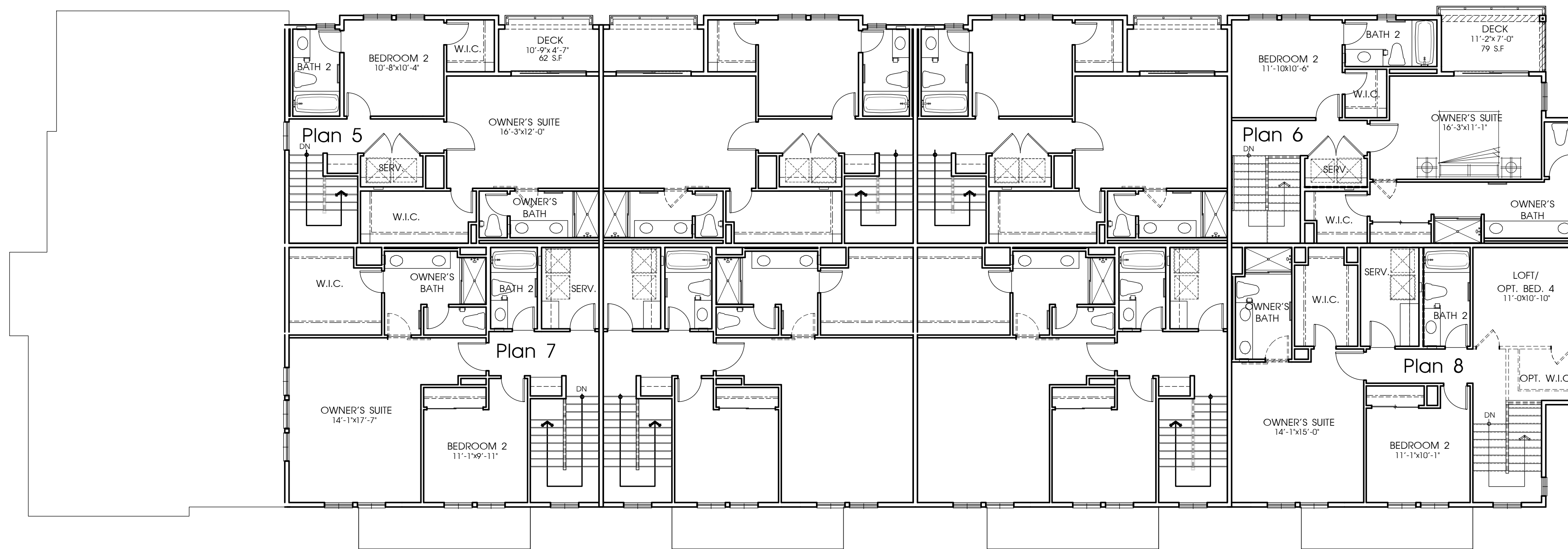
ELEVATION KEY NOTES			
#	DENOTES FLOOR PLAN KEYNOTE	5A	WINDOW - TYP. - SEE DETAILS 1/AD2.1, 6/AD2.1, 11/AD2.1, 16/AD2.1, 21/AD2.1, AND 28/AD2.1
1A	3-COATS STUCCO SYSTEM, DASH FINISH - SEE DETAIL 12/AD4	6	PLI-DEK EXTERIOR DECKING SYSTEM - INSTALL PER MANUF.
1B	STUCCO LID AT CANTILEVER - SEE DETAIL 18/AD3	7	GUARDRAIL + 42" - SEE DETAILS 5/AD3, 10/AD3, AND 13/AD3
1C	STUCCO SOFFIT - SEE DETAIL 19/AD3	8A	WOOD TRELLIS PER PLAN - SEE DETAIL 8/AD4
1D	STUCCO COVERED HI-DENSITY FOAM TRIM - SIZE AS NOTED	8B	WOOD POST PER PLAN - SEE STRUCTURAL DRAWINGS FOR MORE INFORMATION. FOR FLASHING, SEE DETAIL 8/AD4
1E	STUCCO CONTROL JOINT - SEE DETAIL 30/AD3	9	COMPOSITE SIMULATED WOOD TRIM
2A	G.I. WALL FLASHING	10	THIN BRICK VENEER
2B	G.I. ROOF TO WALL FLASHING - SEE DETAIL 1/AD1	11	FIBER CEMENT LAPSIDING
3	CONCRETE ROOF TILE - CLASS 'A' - SEE BUILDING ROOF PLANS	12	METAL AWNING - SEE DETAIL 26/AD3
4A	SWING DOOR - TYP. - SEE DETAILS 1/AD2.0, 6/AD2.0, AND 11/AD2.0	13	FABRIC AWNING - SEE DETAIL 10/AD4
4B	SLIDING GLASS DOOR - SEE DETAILS 16/AD2.0, AND 21/AD2.0	14	6" HIGH MIN. ILLUMINATED UNIT ADDRESS - SEE ELEVATION NOTES E
		15	LIGHT FIXTURE LOCATION
		16	DOWNSPOUT LOCATION
		17	GARAGE DOOR - SEE DETAIL 19/AD2.0, 24/AD2.0, 28/AD2.0, AND 29/AD2.0
		18	LOW WALL
		19	VINE TRELLIS - SEE DETAIL 24/AD3
		20	SIDE VIEW OF POTENTIAL FIRE DEPARTMENT LADDER LOCATION AT 4:1 SLOPE USED TO DETERMINE LADDER PAD DISTANCE FROM BUILDING.



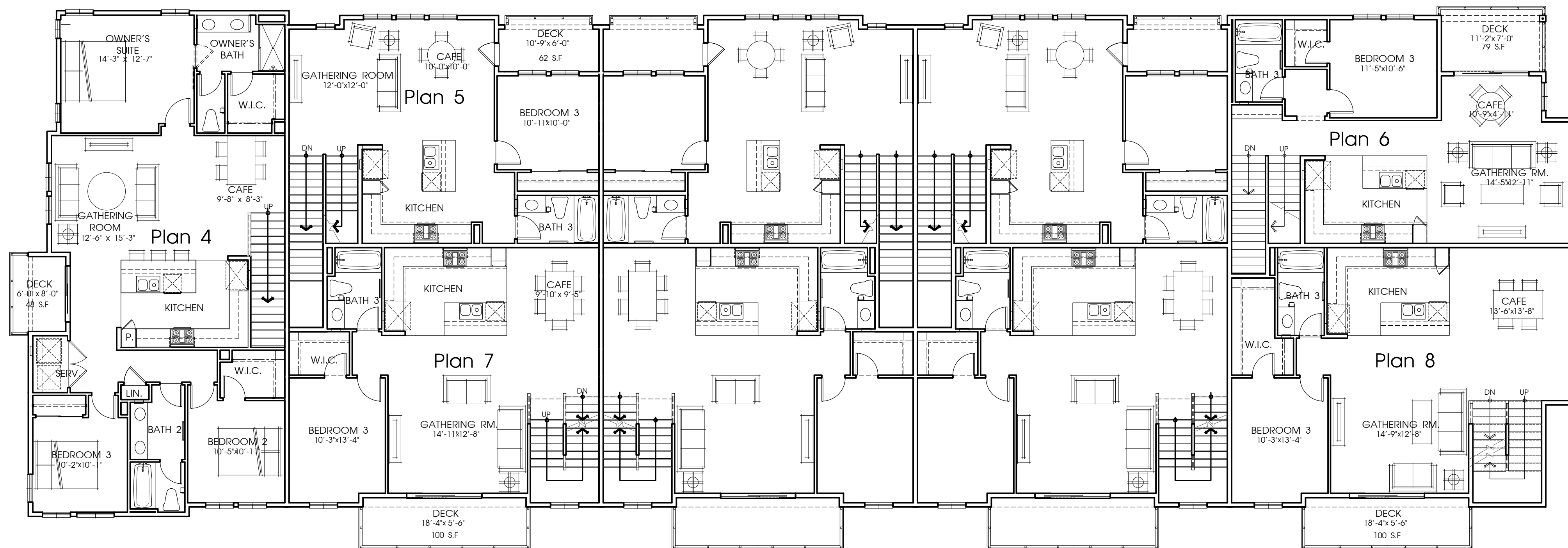
Second Floor



First Floor



Fourth Floor



Third Floor

ba WHA.



Rear



Left



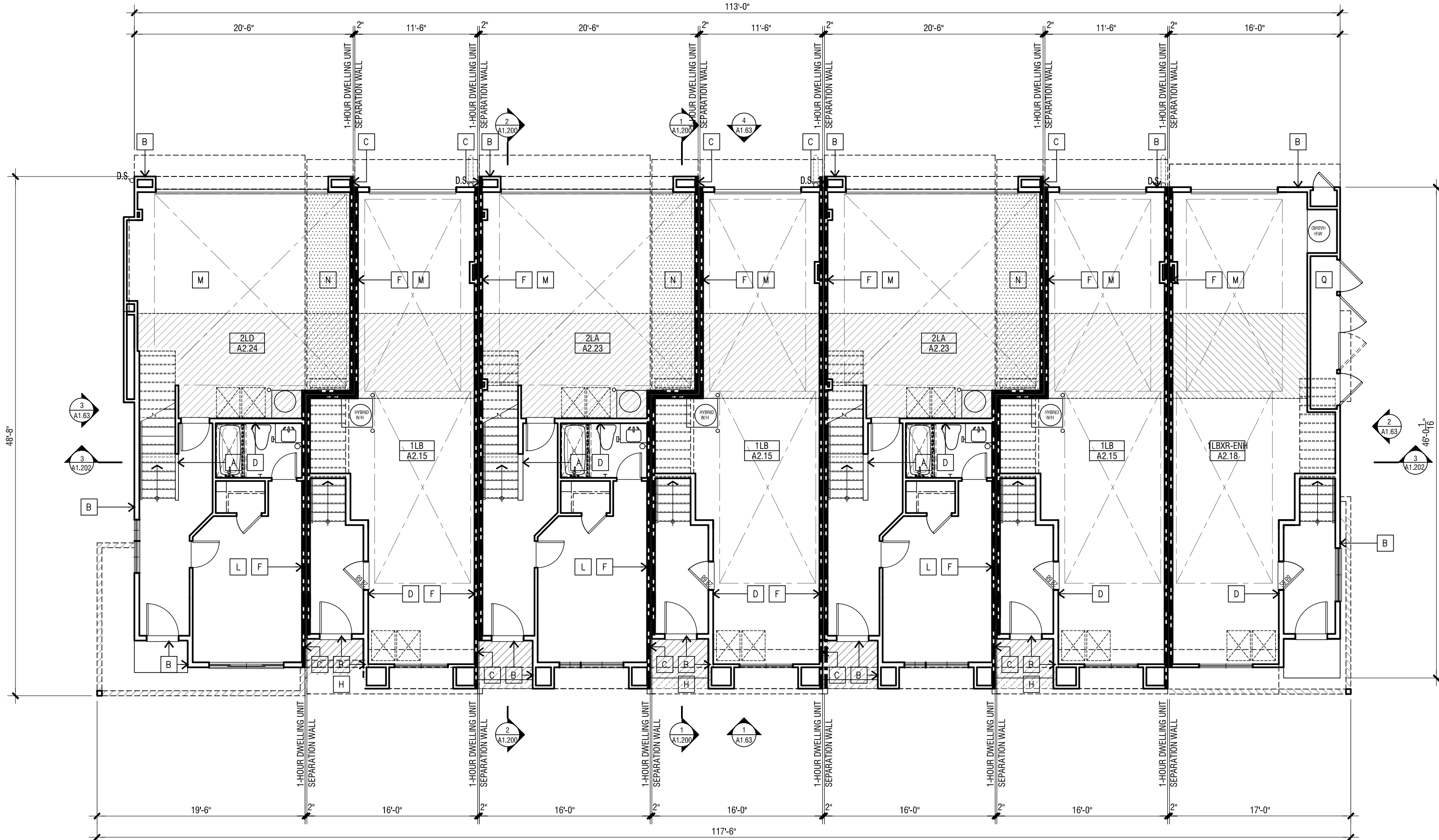
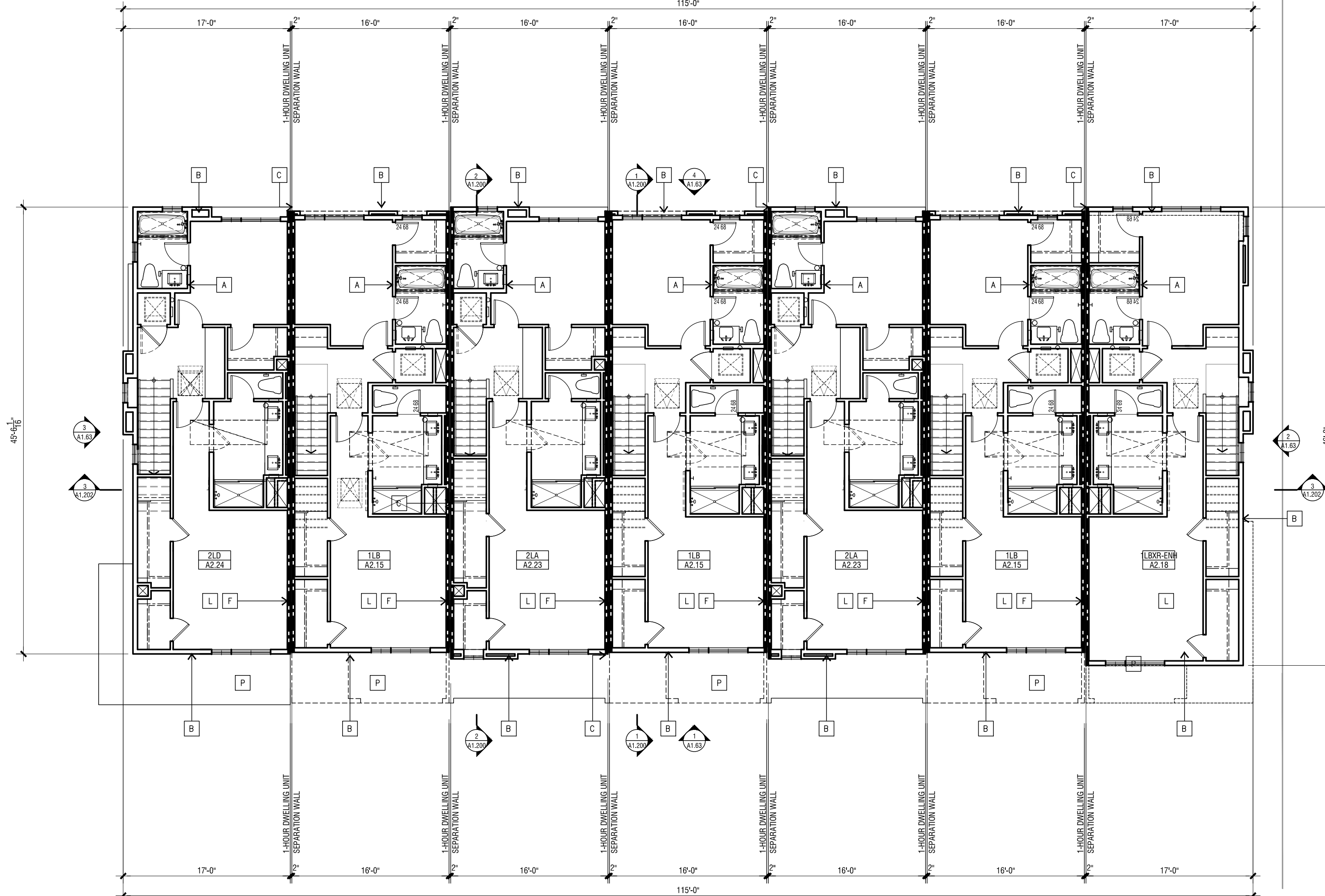
14-Plex - Front

Material Legend:

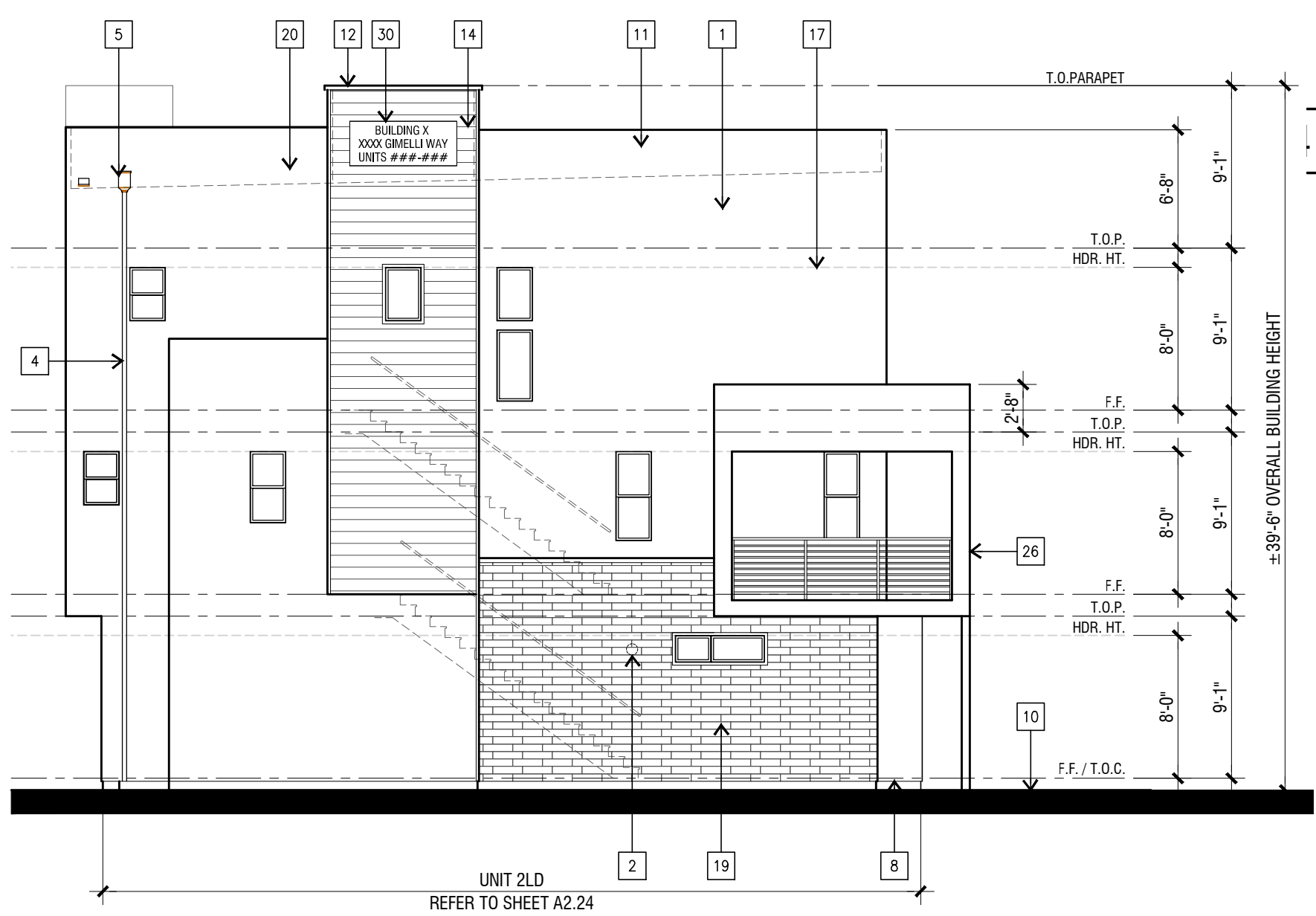
1. Roof
2. Stucco 1
3. Stucco 2
4. Stucco 3
5. Stucco 4 & Railing
6. Tile Veneer
7. Vinyl Window
8. Unit Address
9. Entry Door
10. Garage Door
11. Metal Canopy



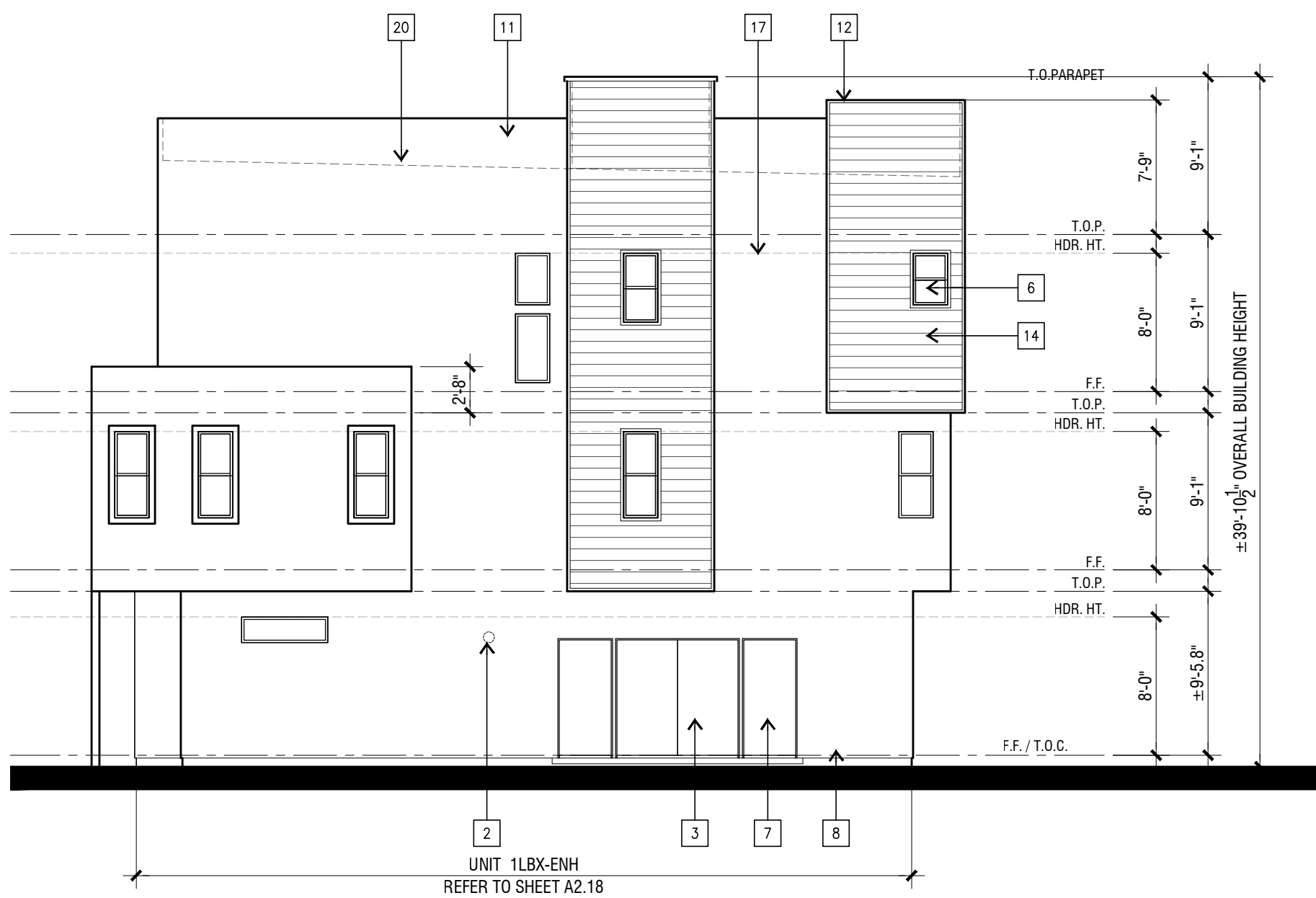
Right



CONSTRUCTION NOTES (TYPE VB)				
SYMBOL	CONSTRUCTION ASSEMBLY	RATING (HOURS)	DESCRIPTION & NOTES	DETAIL REFERENCE
VERTICAL ASSEMBLIES:				
A	INTERIOR NON-BEARING WALL & PARTITION	0	INTERIOR NON-BEARING WALLS AND PARTITIONS SHALL BE OF NON-RATED CONSTRUCTION PER C.C. TABLE 601: REFER TO STRUCTURAL PLANS FOR NON-BEARING WALLS.	(1) DETAIL 1
B	EXTERIOR WALLS - TYPICAL	0	TYPICAL EXTERIOR WALLS ARE NOT REQUIRED TO BE OF RATED CONSTRUCTION. U.O.D.	(1) DETAIL 1
C	EXTERIOR RATED WALLS	1	EXTERIOR WALLS AS NOTED ON PLANS SHALL BE OF 1-HOUR RATED CONSTRUCTION PER C.C. TABLE 601: AND C.C. SECTION 708. ALL OTHER EXTERIOR WALLS ARE NOT REQUIRED TO BE OF RATED CONSTRUCTION.	(1) DETAIL 1
D	INTERIOR HOUSE/CHIMNEY	0	PL-10 CHIMNEY: HOUSE SEPARATION WALL SHALL BE OF 1-HOUR RATED CONSTRUCTION PER C.C. TABLE 601: SUBPART C, AND A SHALL BE SEPARATED WITH TOP OF CHIMNEY CHIMNEY.	(2) DETAIL 2
E	FIRE BARRIERS	1	FIRE BARRIERS SHALL BE OF 1-HOUR RATED CONSTRUCTION PER C.C. SECTION 707.	(1) DETAIL 1
F	FIRE PARTITIONS	1	FIRE PARTITIONS SHALL BE OF 1-HOUR PRE-RATED CONSTRUCTION PER C.C. SECTION 708.	(1) DETAIL 1
G	FIRE WALLS	2	FIRE WALLS SHALL BE OF 2-HOUR RATED CONSTRUCTION PER C.C. SECTION 708.	(1) DETAIL 1
HORIZONTAL ASSEMBLIES (FLOOR/CEILING):				
H	EXTERIOR TO EXTERIOR (Deck over Slab)	0	HORIZONTAL FLOOR/CEILING ASSEMBLY OF NON-RATED CONSTRUCTION PER C.C. SECTION 711.	(1) DETAIL 1
I	EXTERIOR TO INTERIOR (Deck over Slab)	0	HORIZONTAL FLOOR/CEILING ASSEMBLY OF NON-RATED CONSTRUCTION PER C.C. SECTION 711.	(1) DETAIL 1
J	INTERIOR TO EXTERIOR (Living over Garage)	0	HORIZONTAL FLOOR/CEILING ASSEMBLY OF NON-RATED CONSTRUCTION PER C.C. SECTION 711.	(1) DETAIL 1
K	INTERIOR TO INTERIOR (Living over Living)	0	PL-10 TO GARAGE/HOUSE SEPARATION TABLE 601: SUBPART C, AND A GARAGES BEARING PARTITION WALLS SHALL BE SEPARATED FROM MAIN FLOOR WALLS WITH 10" TYPE II CYSTOLITE BOARD INSULATION. HORIZONTAL FLOOR/CEILING ASSEMBLY SHALL BE NON-RATED CONSTRUCTION PER 2016 C.C. SECTION 1111.1.1.1 & 711.4.2.	(1) DETAIL 1
L	INTERIOR TO INTERIOR (Living over Garage)	0	HORIZONTAL FLOOR/CEILING ASSEMBLY SHALL BE OF 1-HOUR RATED CONSTRUCTION PER C.C. SECTION 711.	(1) DETAIL 1
M	INTERIOR TO INTERIOR (Living over Living)	0	HORIZONTAL FLOOR/CEILING ASSEMBLY SHALL BE OF 1-HOUR RATED CONSTRUCTION PER C.C. SECTION 711.	(1) DETAIL 1
N	INTERIOR TO INTERIOR (Living over Living)	1	HORIZONTAL FLOOR/CEILING ASSEMBLY SHALL BE OF 1-HOUR RATED CONSTRUCTION PER C.C. SECTION 711.	(1) DETAIL 1
HORIZONTAL ASSEMBLIES (ROOF/CEILING):				
P	ROOF over EXTERIOR SPACE (Entry Deck/Pavilion)	0	HORIZONTAL ROOF/CEILING ASSEMBLY OF NON-RATED CONSTRUCTION PER C.C. SECTION 711.	(1) DETAIL 1
Q	ROOF over INTERIOR SPACE	0	HORIZONTAL ROOF/CEILING ASSEMBLY OF NON-RATED CONSTRUCTION PER C.C. SECTION 711.	(1) DETAIL 1



KEYNOTES	
1	3-COAT STUCCO - 1/2" FINISH - SEE SPECIFICATIONS FOR ADDITIONAL INFORMATION
2	LIGHT FIXTURE "J" BOX - REFER TO DETAIL 30/AD4.2 FOR INSTALLATION DIMENSIONS & ELECTRICAL DWG. FOR ADDITIONAL INFORMATION
3	METER CLOSET PER PLANS - VERIFY UTILITY PANELS/METERS LOCATION(S) WITH UTILITY COMPANIES
4	METAL DOWNSPOUT, TYPICAL - DOWNSPOUT TO BE PAINTED TO MATCH ADJACENT MATERIAL - REFER TO DETAILS 1, 2, 6 & 7/ADS.1
5	SCUPPER WITH OVERFLOW, PAINTED TO MATCH ADJACENT MATERIAL - REFER TO DETAIL 5/ADS.1
6	MANUFACTURED WINDOW(S) PER WINDOW SCHEDULE - REFER TO DETAILS ON SHEET AD2.2
7	EXTERIOR DOOR PER DOOR SCHEDULE - REFER TO DETAILS ON SHEET AD2.1
8	STUCCO WEEP SCREED - REFER TO DETAIL 3, 4 & 5/AD1.1
9	GARAGE DOOR PER DOOR SCHEDULE - REFER TO DETAILS 4/AD2.1 AND 5/AD2.1
10	FINISHED GRADE - REFER TO CIVIL DRAWINGS FOR SLOPES AND FURTHER GRADE INFORMATION
11	EXTERIOR PLASTER PARAPET W/ METAL FLASHING - REFER TO DETAIL 11/ADS.1
12	LAP SIDING PARAPET W/ METAL FLASHING - REFER TO DETAIL 12/ADS.1
13	UNIT ADDRESS, VISIBLE AND LEGIBLE FROM THE STREET - REFER TO DETAIL 30/AD4.2 FOR INSTALLATION DIMENSIONS AND ADDITIONAL INFORMATION
14	FIBER CEMENT LAP SIDING, "HARDIEPLANK" BY JAMES HARDIE OR APPROVED EQUAL, 8" EXPOSURE
15	DECORATIVE METAL CANOPY, CENTER ON DOOR/WINDOW - REFER TO STRUCT. DWG. AND DETAILS 22 & 30/ADS.2
16	STUCCO OVER WOOD FRAMED AWNING - REFER TO DETAIL 15/ADS.2
17	STUCCO CONTROL JOINT - REFER TO DETAIL 19/AD4.1
18	1" STUCCO CHANNEL AT COLOR TRANSITION, REFER TO DETAIL 24/AD4.1 & COLOR LOCATION PACKAGE
19	CREATIVE MINES "IMAGINE CRAFT" STONE VENEER - INSTALL PER MFR. INSTRUCTIONS
20	LINE OF ROOF BEYOND
21	FIRE RISER PANEL LOCATION - REFER TO CIVIL AND PLUMBING PLAN FOR ADDITIONAL INFORMATION
22	THE EXTERIOR WALL BEHIND AND BELOW THE PROJECTING ELEMENT SHALL BE OF NOT LESS THAN 1-HOUR FIRE-RESISTANCE-RATED CONSTRUCTION FOR A DISTANCE NOT LESS THAN THE DEPTH OF THE PROJECTING ELEMENTS ON BOTH SIDES OF THE FIRE WALL. PER C.B.C. SECTION 705.5.2 EXCEPTION 3 - SEE BUILDING PLANS AND DETAILS 4/AD1.1 AND 7/AD1.1. PARAPETS SHALL HAVE THE SAME FIRE-RESISTANCE RATING AS THAT REQUIRED FOR THE SUPPORTING WALL AND SHALL BE NOT LESS THAN 30 INCHES ABOVE THE ROOF SURFACE PER C.B.C. SECTION 705.11.1 - SEE DETAILS 23 & 24/ADS.1. RATED AREAS INDICATED ARE MINIMUM REQUIREMENTS PER THE BUILDING CODE. CONTRACTORS SHALL CONTINUE RATED CONDITIONS AS NECESSARY TO OBTAIN AN EVEN/FLUSH EXTERIOR WALL SURFACE.
23	6x6 ARCHITECTURAL GRADE GULUM WOOD POST OR CLIENT-APPROVED EQUAL
24	SIDING AT FOUNDATION - REFER TO DETAILS 6, 11, & 12/AD1.1
25	STUCCO LOW WALL GUARD PER CBC SECTION 1013.2 - REFER TO DETAIL 2/AD4.1
26	+42" HIGH METAL GUARD RAILING - REFER TO DETAIL 5/AD4.2
27	DECORATIVE WOOD TRELLIS, REFER TO DETAIL 15/AD4.2
28	VINE SUPPORTS - REFER TO DETAIL 12/AD4.1 AND LANDSCAPE PLANS FOR ADDITIONAL INFORMATION
29	STUCCO OVER WOOD FRAMED AWNING - REFER TO DETAIL 15/ADS.2
30	BUILDING ADDRESS AND UNIT NUMBERS, VISIBLE AND LEGIBLE FROM THE STREET OR ROADWAY FRONTING THE PROPERTY, PER FIRE PREVENTION DIRECTIVE #002-2009 - SEE DETAIL 15/AD4.1
31	2"x2" 18GA. "ZIPPER" GUTTER W/ SPILLWAY, TO BE INSTALLED BY FLASHING - REFER TO DETAIL 14/ADS.1 AT STUCCO CONDITIONS & REFER TO DETAIL 30/ADS.1 AT SIDING CONDITIONS, TYPICAL - TO BE PAINTED TO MATCH ADJACENT MATERIAL
32	FIBER CEMENT LAP SIDING, "HARDIEPLANK" BY JAMES HARDIE OR APPROVED EQUAL, 7" EXPOSURE - REFER TO DETAIL 30/AD2.2
33	EXTERIOR PLASTER PARAPET W/ SOFFIT - REFER TO DETAIL 14/ADS.1





CITY OF MILPITAS

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

June 11, 2021

Adrienne Smith, Associate Planner
City of Milpitas – Planning Department
455 E. Calaveras Blvd.
Milpitas, CA 95035

Dear Mrs. Smith,

On behalf of the City of Milpitas' Office of Economic Development, I am writing to convey my concerns related to the proposed project located at 1355 California Circle. While it is prudent to review and consider residential development in Milpitas, this specific site is situated within an industrial and commercial zone that includes such uses as manufacturing, lodging, educational, and community services.

The Economic Development Strategy outlines a plan for ensuring that Business to Business (B2B) relationships in industrial and commercial areas in Milpitas result in sales occurring between businesses, which typically results in sales tax revenues for the City. Not only does California Circle offer great Highway 880 visibility for the business community, but there is strong demand for industrial space which create quality job opportunities for area residents.

Furthermore, the recently adopted General Plan recommends that a future Specific Plan be considered for this general area. Action LU-2b of the General Plan Update, states that the City shall seek to prepare and adopt a Specific Plan for California Circle that addresses priorities and objectives for a mix of commercial, office, and industrial park uses, with opportunities for residential development in a primarily mixed-use format. Should the applicant decide to proceed with initiating a Specific Plan in this area to explore mixed-use opportunities, the Office of Economic Development looks forward to working with the applicant.

Sincerely,

Alex Andrade
Economic Development Director

Wendy Wood

Subject: FW: [BULK] California circle project

Importance: Low

-----Original Message-----

From: Leighann Reppenhagen

Sent: Thursday, September 16, 2021 9:23 PM

To: Rozalynne Thompson <rthompson@ci.milpitas.ca.gov>

Subject: [BULK] California circle project

Importance: Low

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Please include my comments for the California Circle project on the next council agenda.

Thank you Mayor and City Council for your service and making sure projects are really held to a high standard. I would like to send my support for allowing the project at California Circle to be processed. I enjoyed hearing more about it and some of the things they are proposing. We need workforce housing that helps Milpitas School District retain teachers and employees. I thank Pulte homes for going above and beyond what is required. I think when done, we could have a project that meets our housing goals and that provides a great community benefit. Please let them complete their project.

Leighann R.

Wendy Wood

Subject: FW: [BULK] California Circle

Importance: Low

-----Original Message-----

From: C E

Sent: Thursday, September 16, 2021 9:58 PM

To: Rozalynne Thompson <rthompson@ci.milpitas.ca.gov>

Subject: [BULK] California Circle

Importance: Low

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Ms. Thompson. Would you please forward my comments to the Milpitas City Council. It is for an item on the next agenda.

Dear Mayor and City Council.

I am a Milpitas resident and a Milpitas High School graduate. I have lived in Milpitas for over 30 years and it has been great seeing Milpitas grow over the years. I am especially fond of our schools and making sure that our education system is at the same level as when I went to school. We need to do everything we can to support our schools and support Milpitas School District. Part of that means attracting the best teachers and school district employees.

Thank you for prioritizing and seeing the need to support our teachers and school district employees. You are the first Council to do this. When I heard about a project that was looking to include teacher housing as part of their development, I said "finally"

I ask that you please let this project on California Circle move forward.

Thank you

Mina

Sent from my iPhone

Wendy Wood

Subject: FW: 1355 California Circle

-----Original Message-----

From: marcus rangel

Sent: Friday, September 17, 2021 7:01 AM

To: Rozalynne Thompson <rthompson@ci.milpitas.ca.gov>

Subject: 1355 California Circle

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hi Mrs. Rozalynne. I would like to submit this letter to the Council

I am writing you regarding an application for housing on California circle. I was recently briefed by Mr. Gomez about a future project. It sounds really exciting and I ask that you please let the project move forward.

I am long time resident of Milpitas. I went to Randall School, Rancho Middle School and Milpitas High School. The fact that the project is looking at including about a third affordability seemed good enough. Add to that the fact that some of these could be for Milpitas School District employees is really great. I heard it was the Council that suggested that we needed to do something for the school district. Thank you. We need to support our schools.

I will try to call in at Tuesdays Council meeting depending on my work schedule. But if I don't, right on. Keep up the good work and lets see more projects like this come forward.

Marcus Rangel



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	FY 2020-21 Fourth Quarter Financial Status Report, Fund Balances Thereof and Related Budget Amendments to Close-out the FY 2020-21 Budget
Category:	Leadership and Support Services
Meeting Date:	9/21/2021
Staff Contact:	Lauren Lai, Director of Finance, 408-586-3111
Recommendation:	1. Review the FY 2020-21 Quarterly Financial Status Report for the Quarter Ending June 30, 2021 2. Provide direction on fund balance allocation, and 3. Approve budget amendment recommendations.

Background:

On June 2, 2020, the City Council approved the Fiscal Year (FY) 2020-21 Adopted Operating Budget in the amount of \$220.3 million and the General Fund Budget in the amount of \$117.0 million. Due to continued negative economic impact from COVID-19, the FY 2020-21 budget was rebalanced at mid-year. The City Council approved budget amendments that realigned revenue with updated projection and reduced personnel and non-personnel costs. Consistent with the fiscal reporting policies, staff monitors and tracks revenues and expenditures for all funds with an emphasis on the General Fund and Enterprise Funds.

Analysis:

This staff report provides the final quarterly update for FY 2020-21 on budget versus actual revenues and expenditures of the General, Water and Sewer Funds, based on unaudited financial reports as of June 30, 2021. Further, this staff report includes recommendations to close out the FY 2020-21 budget and implement the Council approved reserve policies.

Fourth Quarter Financial Status Report

The summary information below as well as the attachments provide an overview of the financial status for the General, Water, and Sewer funds for FY 2020-21 as of June 30, 2021, a variance analysis of budget versus actual revenues and expenditures for the fourth quarter of FY 2020-21 as well as prior year actual revenues and expenditures for the fourth quarter of FY 2019-20 for comparison purposes. The COVID economic devastation required the use of one-time revenues to balance the budget including: \$4.5 million of the Budget Stabilization Reserve (BSR), \$4 million from General Government Capital Improvement Program (CIP), and \$5.4 million TASP loan repayment, which is a reversal of the 2014 General Fund interfund loan to the Transit Area Impact Fee Capital Projects Fund. The TASP interfund loan was to be repaid when the fund collected sufficient impact fees from developers. Moreover, it also required the City to defund 13.75 positions (full-time equivalent "FTE"). The table below briefly summarizes the unaudited General Fund FY2020-21 revenues, expenditures, use of reserves and surplus of \$5.2 million, which is primarily due to one-time revenue and expenditure savings.

General Fund (\$	FY2020-21 Adopted	FY2020-21 Amended Budget	Unaudited Actual	Budget
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million)	Budget	As of 6/30/2021		Variance
Revenue	\$112.5	\$108.5	\$114.7	\$6.2
Use of Reserve	4.5	4.5	0	(4.5)
Expenditure	117.0	113.7	109.5	(4.2)
Surplus/(Deficit)	0	(0.7)*	5.2	5.9

*Primarily due to prior year encumbrances POs and contracts

General Fund Revenues (Attachment 1)

For the twelve months ending June 30, 2021, the General Fund has received \$114.7 million in revenues, or 105.7%, of the FY 20-21 amended operating budget of \$108.5 million, which includes operating transfers in. The variance is primarily due to one-time revenues related to property tax (\$4.2 million), license & permits (\$1.6 million) and intergovernmental revenues (\$0.9 million). The amended budget of \$108.5 million is comprised of the \$112.6 million of the adopted budget minus the budget amendments of \$4.1 million. A summary analysis on major revenue sources of unaudited figures is provided below.

General Fund Revenues	FY21 Amended Budget	FY21 Revenue As of 6/30/21	FY 21 Budget Variance	FY21 Percentage of Amended Budget
Property Taxes	\$ 36,872,241	\$ 41,093,302	\$4,221,061	111.45%
Sales Taxes	23,303,100	23,783,523	480,423	102.06%
Sales Tax - Measure F	1,203,117	1,330,572 *	127,455	110.59%
Hotel/Motel Tax	4,100,000	4,213,325	113,325	102.76%
License & Permits	9,399,120	10,993,297	1,594,177	116.96%
Charges for Services	4,949,500	4,565,988	(383,512)	92.25%
Franchise Fees	5,514,787	5,035,476	(479,311)	91.31%
Interest Income	1,000,000	1,204,775	204,775	120.48%
Other Taxes	1,196,860	1,046,895	(149,965)	87.47%
Intergovernmental	3,974,517	4,904,266	929,749	123.39%
Other Revenue	892,438	445,009	(447,429)	49.86%
Operating Transfers In	16,050,661	16,050,148	(513)	100.00%
Total General Fund Revenue	\$108,456,341	\$114,666,574	\$6,210,233	105.73%

- **Property Taxes and Redevelopment Property Tax Trust Fund:** For the twelve months ending June 30, 2021, \$41.1 million, or 111.4%, of the \$36.9 million of the amended budget has been received. Revenues are 8.7% higher than last year at the same time, due to a higher Excess ERAF payment received. The City received \$3.3 million in comparison with \$1.9 million budgeted for Excess ERAF. This \$1.4 million of favorable Excess ERAF is one-time and Santa Clara County cautions the City against relying upon this surplus in future years.
- **Sales & Use Tax:** For the twelve months ending June 30, 2021, \$23.8 million, or 102.1%, of the \$23.3 million amended budget has been received. Revenues are 5.1% less than last year at the same time which is due to the COVID-19 Virus and shelter-in-place orders for most of the fiscal year, resulting in less consumption overall. Measure F sales tax became effective April 1, 2021 and for the quarter ending June 30, 2021, the City received \$1.3 million, which closely aligns with the \$1.2 million amended budget.
- **Franchise Fees:** For the twelve months ending June 30, 2021, \$5.0 million, or 91.3%, of the \$5.5 million amended budget has been received. Revenues are 2.7% less than last year at the same time, mostly due to COVID-19 restrictions that shuttered businesses, resulting in a decrease of commercial waste.

- Hotel/Motel (TOT) Tax: For the twelve months ending June 30, 2021, \$4.2 million, or 102.8%, of the \$4.1 million amended budget has been received. Revenues are 63.0% lower than last year at the same time which is due to the COVID-19 shelter-in-place order and significant reduction of business and leisure travel.
- License and Permits: For the twelve months ending June 30, 2021, \$11.0 million, or 117.0%, of the \$9.4 million amended budget has been received. Revenues are 21.6% higher than last year at the same time due to the recognition of deferred building inspection and plan check fees for developer projects completed in FY 2020-21. Project timelines vary on a case-by-case basis and seldom within City control. Consequently, it is prudent to deem this as one-time revenue variance that provide additional fund balance resources, instead of on-going funding for General Fund operations.
- Charges for Services: For the twelve months ending June 30, 2021, \$4.6 million, or 92.3%, of the \$4.9 million amended budget has been received. Revenues are 14.8% lower than last year primarily due to COVID-19 cancellation of classes and activities that required Recreation fees refunds. The revenue reduction was offset with reduction in Recreation and Community Services expenditures.
- Intergovernmental: For the twelve months ending June 30, 2021, \$4.9 million, or 123%, of the \$4.0 million amended budget has been received. Revenues are 222% higher than last year primarily due Federal CARES (\$1.2 million) and State Fire Strike Team reimbursement (\$2 million, net). Intergovernmental revenues have offsetting expenditures.

General Fund Expenditures (Attachment 2)

For the twelve months ending June 30, 2021, the General Fund expenditures was \$109.5 million (including encumbrance of \$2.8 million), which is \$4.2 million (3.7%) less than the amended budget of \$113.7 million. The budget represents the adopted appropriation of \$117.0 million, plus \$2.9 million of prior year encumbrances and reduced by the \$6.2 million due to rebalancing required by COVID-19 negative economic impacts. The magnitude and uncertainty of the pandemic impact required the City to defund 13.75 positions (full-time equivalent "FTE"). The fiscal year 2020-21 expenditures savings are primarily due to vacancy savings and CalPERS budgetary savings (net \$2.1 million) and non-personnel savings (i.e., supplies and services) (net \$2.1 million) due to reduced COVID-19 restrictions upon City operations. Consequently, it is prudent to deem this as one-time expenditure variance that provides additional fund balance resources, instead of on-going reductions of General Fund operating budget.

Unanticipated Expenditure Reserve

In accordance with the City Council approved Budget Guidelines, as part of the quarterly financial status reports, staff shall report on the use of the Unanticipated Expenditure Reserve for the 4th quarter.

Description	Amount
Additional Cleaning Services and Supplies	\$132,386
Communication and Outreach	7,862
Personal Protective Equipment (Isolation Suits/Face Shields, Nitrile Gloves and Masks, Sanitizing Wipes, Disinfectants)	74,765
First Responder UV Sterilizer	14,681
Legal Services (Best, Best and Krieger)	19,861
Mobile and County Testing Sites	36,404
Employee Quarantine Housing and Testing	13,567
Emergency Operations Center (EOC) Staffing	52,095
Miscellaneous COVID-19 Expenditures	687
Other Services (ARPA Advisory, Logo Design)	46,656
TOTAL for the Quarter Ending June 30, 2021	398,965

General Fund Reserve Policies Implementation

For the fiscal year ended June 30, 2021, the City's General Fund unaudited net surplus of \$5.2 million, with revenues of \$114.7 million and expenditures of \$109.5 million. This net surplus is deemed one-time because the favorable revenue variances are primarily non-recurring and the expenditure savings are predominately due to FY20-21 managed hiring freezes of non-essential positions and non-personnel budgetary savings related to COVID-19 service restrictions. While the FY 20-21 Adopted General Fund Budget authorized \$4.48 million of Budget Stabilization Reserve (BSR) to balance the budget, the use of this reserve was not necessary. As a result, the BSR as of June 30, 2021 remained at the \$17.09 million level. Reserves are a critical policy for fiscal resiliency and sustainability, and is especially critical during this time as the COVID-19 pandemic continues to be a public health concern, with new variants such as Delta and Mu emerging and driving case counts and positivity rates higher.

As approved by Council on May 18, 2021, staff worked with PFM Asset Management LLC to establish a Section 115 Pension Trust to mitigate rising pension costs. Consequently, \$33.9 million of CalPERS reserve was transferred to the Section 115 Pension Trust. For presentation purposes only, these funds are shown as part of the CalPERS Rate Stabilization Reserve in the table below.

Based on the General Fund unaudited FY 2020-21 operating expenditures of \$109.5, the reserve target for the Contingency Reserve and the Budget Stabilization Reserve (BSR) is set at \$18.25 million or 16.67% of approximately \$109.5 million. Consistent with the Council approved General Fund Reserve Policies, staff allocated the FY 2020-21 General Fund surplus as follows: \$0.95 million to the Contingency Reserve, \$1.16 million to the BSR and \$2.80 million to CalPERS stabilization reserve, \$0.12 million to unassigned fund balance and \$0.2 million to various other reserves.

The table below shows the estimated Reserve Balances as of June 30, 2021, which is consistent with Council Reserve Policies.

(in millions)	Preliminary FY 2020-21 Reserve Balance Prior to FY21	Recommended Allocation/ Per Council Policy	FY 2020-21 Reserve balance (as of 6/30/2021)	Estimated Reserve Balance (6/30/2022)	Reserve Target Per Fiscal Policies
Contingency Reserve	17.30	0.95	18.25	18.25	18.25
Budget Stabilization Reserve	17.09	1.16	18.25	18.25	18.25
Future Deficit Reserve	1.45		1.45	1.45	N/A
CalPERS Rate Stabilization**	33.90	2.74	36.64	36.64	N/A
Artificial Turf Replacement	1.21		1.21	1.21	2.00
Facilities Replacement Fund	7.00		7.00	7.00	10.00
Technology Repl. Reserve	2.00		2.00	2.00	5.00
Workers Comp/ Gen Liab Reserve*	2.00		2.00	2.00	2.00
Total General Fund Assigned Reserve	81.95	4.85	86.80	86.80	
CalPERS Rate Stabilization** (20%)		0.06			
General Government CIP (20%)		0.06			
Housing Community Benefit (10%)		0.03			
Transportation & Transit (10%)		0.03			
Gen Fund Unassigned (40%)		0.12			
Subtotal		0.30			
Total Fund Balance Allocation		5.15			

* Prior to FY 2020-21, this Reserve was not budgeted and only shown in the Annual Comprehensive Financial Report.

**CalPERS Rate Stabilization Reserve was transferred to the Section 115 Trust.

General Fund Reserve Policy Alternatives

As an alternative to implementing the General Fund reserve policies, the City Council may want to consider allocating the fiscal year 2020-21 net budget surplus in the amount of \$5.15 million differently. For example, after fully funding the Contingency and Budget Stabilization Reserves at the target level in the amount of \$2.11 million, Council may want to consider allocating only \$1 million to CalPERS Rate Stabilization Reserve and allocating the remaining \$2.04 million to areas that were impacted during the FY 2021-2022 budget process. To rebalance the fiscal year 2020-21 budget, \$4 million of General Government CIP funding was transferred one-time to the General Fund. Therefore, Council may want to consider transferring \$1.04 million to the General Government CIP in order to fund parks improvements and/or other urgent repairs and rehabilitations. Another area for Council consideration could be recognition of the contributions from three of the five represented bargaining groups and the unrepresented executive management group. These employee groups voluntarily negotiated to give up their previously approved FY 2020-21 and/or FY 2021-2022 raises. Additionally, unrepresented executive management temporarily gave up a previously approved benefit. These contributions by a majority of the City's employees resulted in approximately \$2.4 million in ongoing General Fund savings that helped balance the FY 2021-2022 budget. Thus, Council may want to consider allocating \$1 million to either provide a one-time payment or explore other ways to recognize the contributions of these employee groups.

Water Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2021, \$30.6 million of charges for services, or 98.1%, of the \$31.2 million budgeted has been received. Total revenue received amounts to \$31.2 million, or 97.7%, of the \$31.9 million budgeted.

Expenditures: For the twelve months ending June 30, 2021, \$28.6 million, or 100.8%, of the \$28.4 million amended budgeted has been spent.

Water Fund Expenditure Savings: For the fiscal year ended June 30, 2021, the Water Fund realized unaudited revenues of \$31,179,027 and expenditures of \$28,642,775. This resulted in a one-time Water Fund expenditure savings of \$2,536,252.

Sewer Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2021, \$19.9 million of charges for services, or 96.2%, of the \$20.7 million budgeted has been received. Total revenue received amounts to \$20.5 million, or 98.3%, of the \$20.9 million budgeted.

Expenditures: For the twelve months ending June 30, 2021, \$15.2 million, or 83.4%, of the \$18.3 million amended budgeted has been spent.

Sewer Fund Expenditure Savings: For the fiscal year ended June 30, 2021, the Sewer Fund realized unaudited revenues of \$20,536,622 and expenditures of \$15,220,198. This resulted in a one-time Water Fund expenditure savings of \$5,316,424.

Budget Amendment Recommendations

Staff recommends approval of five budget amendments to align appropriations to actual expenditures incurred, services rendered, and revenues received.

1. Expenditure Adjustment Recommendations

- a. Increase City Attorney's operating budget from General Fund Non-Departmental budget for Attorney services for \$100,845 for unanticipated services performed

- b. Increase Public Works Water Fund operating budget from Water Fund Non-Departmental budget for \$337,104 due to personnel cost
- c. Increase Public Works LLMD 95 operating budget from LLMD 95 fund balance for \$45,627 due to unexpected utility cost
- d. Increase Public Works LLMD 98 operating budget from LLMD 98 fund balance for \$15,344 due to unexpected utility cost
- e. Increase Building Safety and Neighborhood CDBG budget from CDBG grant revenue for \$116,369 due to reimbursable expenses
- f. Increase Planning Fund 214 operating budget from Fund 214 fund balance for \$4,327 due higher than expected personnel cost

Policy Alternatives:

Alternative 1: Direct an alternative fund balance allocation reflective of the budget balancing contributions and decisions for FY 2020-21 and FY 2021-22.

Pros: Achieves Contingency and Budget Stabilization Reserves, contributes to the CalPERS Rate Stabilization Reserve, partially restores General Government CIP funding and recognizes monetary contributions made by some of the City's employee groups in order to balance the FY 2020-21 and FY 2021-22 budgets.

Cons: Inconsistent with Council approved Reserve Policies.

Reason not recommended: Staff is required to implement the Council approved Reserve Policies, however, given the extraordinary circumstances brought about by the pandemic and resulting impacts to infrastructure funding and City employees, this policy alternative is being offered for Council consideration.

Fiscal Impact:

For the fiscal year ended June 30, 2021, the City's General Fund unaudited surplus of \$5.2 million, with revenues of \$114.7 million and expenditures of \$109.5 million. This result is primarily from one-time revenues and expenditure savings. If Council approves the recommendations outlined in this report, there is no fiscal impact to General Fund, Water Fund and CDBG fund balance. The LLMD 95 fund balance will be reduced by \$45,627, the 2008 Community Facility District fund balance will be reduced by \$15,344 and the Community Planning Fund fund balance will be reduced by \$4,237.

California Environmental Quality Act:

Not applicable.

Recommendation:

Review the FY 2020-21 Quarterly Financial Status Report for the Quarter Ending June 30, 2021.

Attachments:

1. FY 2020-2021 Revenue Report for Fiscal Year-To-Date June 30, 2021
2. FY 2020-2021 General Fund Expenditures by Department June 30, 2021
3. FY 2020-2021 Water and Sewer Funds Financial Status for Fiscal Year-To-Date June 30, 2021
4. Budget Change Form

CITY OF MILPITAS
General Fund Revenues
For Fiscal Year-To-Date June 30, 2021

	FY21	FY21	FY21	FY21	FY21	FY 21	FY21	FY20	Percentage
	Adopted	Budget Amendments	Mid-Year	Amended	Revenue	Budget	Percentage of Amended Budget	Revenue	Inc (Dec)
General Fund Revenues	Budget	As of 12/31/2020	Budget Changes	Budget	As of 6/30/21	Variance		As of 6/30/20	FY21 / FY20
Property Taxes	\$ 36,872,241		\$ -	\$ 36,872,241	\$ 41,093,302	\$ 4,221,061	111.45%	\$ 37,799,082	8.72%
Sales Taxes	28,371,951		(5,068,851)	23,303,100	23,783,523	480,423	102.06%	25,058,324	-5.09%
Sales Tax - Measure F	-		1,203,117	1,203,117	1,330,572 *	127,455	110.59%	-	0.00%
Hotel/Motel Tax	13,452,683		(9,352,683)	4,100,000	4,213,325	113,325	102.76%	11,376,522	-62.96%
License & Permits	9,907,120		(508,000)	9,399,120	10,993,297	1,594,177	116.96%	9,039,341	21.62%
Charges for Services	7,814,500		(2,865,000)	4,949,500	4,565,988	(383,512)	92.25%	5,357,778	-14.78%
Franchise Fees	5,514,787		-	5,514,787	5,035,476	(479,311)	91.31%	5,173,191	-2.66%
Interest Income	1,364,000		(364,000)	1,000,000	1,204,775	204,775	120.48%	2,077,453	-42.01%
Other Taxes	1,196,860		-	1,196,860	1,046,895	(149,965)	87.47%	1,109,380	-5.63%
Intergovernmental	808,597	621,405	2,544,515	3,974,517	4,904,266	929,749	123.39%	1,521,968	222.23%
Other Revenue	258,000	2,500	631,938	892,438	445,009	(447,429)	49.86%	442,902	0.48%
Operating Transfers In	7,013,990		9,036,671	16,050,661	16,050,148	(513)	100.00%	6,019,566	166.63%
Total General Fund Revenue	\$112,574,729	\$623,905	-\$4,742,293	\$108,456,341	\$114,666,574	\$6,210,233	105.73%	\$104,975,509	9.23%

*Sales Tax Measure F effective April 1, 2021.

City of Milpitas
General Fund Expenditures by Department
For Fiscal Year-To-Date June 30, 2021

Percent of Year

Department/Division	FY 2020-21 Adopted Budget	FY 2020-21 Budget Amend. 6/30/2021	FY 2020-21 Carryover Grants	FY 2020-21 Carryover Encumbrances	FY 2020-21 Amended Budget	FY 2020-21 Exp. incl. Encumbr. As of 06/30/2021	FY 2020-21 Budget Variance	FY 2020-21 Percent of Amended Budget	Adjusted Percent Utilized	FY 2019-20 Exp. incl. Encumbr. As of 06/30/2020
City Council	546,979	(99,903)	-		447,076	342,052	(105,024)	76.51%	76.51%	333,297
City Manager	2,436,753	(179,235)	-	59,935	2,317,453	2,198,328	(119,125)	94.86%	94.86%	2,016,461
City Clerk	615,270	(15,579)	-		599,691	608,551	8,860	101.48%	101.48%	621,658
Economic Development	914,119	(137,714)	50,000	47,127	873,532	822,776	(50,756)	94.19%	94.19%	852,193
Policy Planning	4,513,121	(432,431)	50,000	107,062	4,237,752	3,971,707	(266,045)	93.72%	93.72%	3,823,609
Building, Safety, and Housing	6,948,858	(1,487,687)		213,810	5,674,981	5,600,986	(73,995)	98.70%	98.70%	5,852,846
City Attorney	1,340,303	(3,513)		16,611	1,353,401	1,412,482	59,081	104.37%	104.37%	1,220,270
Finance	4,377,990	(272,338)		167,508	4,273,160	4,272,250	(910)	99.98%	99.98%	4,205,413
Public Works	9,155,208	(517,701)		572,586	9,210,093	9,355,086	144,993	101.57%	101.57%	8,849,548
Engineering	4,154,817	(499,421)		177,600	3,832,996	3,661,237	(171,759)	95.52%	95.52%	3,612,214
Planning	1,931,383	192,547		40,919	2,164,849	2,152,184	(12,665)	99.41%	99.41%	1,991,866
Police	38,296,018	(3,885,063)	17,979	298,483	34,727,417	34,712,155	(15,262)	99.96%	99.96%	34,338,421
Fire	28,280,291	(303,155)		272,430	28,249,566	28,263,765	14,199	100.05%	100.05%	26,694,459
Information Technology	3,721,547	(174,620)		28,054	3,574,981	3,562,993	(11,988)	99.66%	99.66%	3,084,280
Human Resources	2,101,658	(77,346)		107,020	2,131,332	1,896,862	(234,470)	89.00%	89.00%	1,930,342
Recreation	6,304,108	(2,004,948)		9,845	4,309,005	3,674,168	(634,837)	85.27%	85.27%	5,247,827
Non-Departmental	5,624,683	3,234,958		775,912	9,635,553	6,661,942	(2,973,611)	69.14%	69.14%	4,940,488
Transfers Out	300,000				300,000	300,000	-	100.00%		2,549,721
Total	117,049,985	(6,230,718)	67,979	2,787,840	113,675,086	109,497,817	(4,177,269)	96.33%	96.33%	108,341,304

City of Milpitas
Water and Sewer Financial Status
For Fiscal Year-To-Date June 30, 2021

Percent of Year	100%						
Revenue	FY 2020-21 Adopted Budget	FY 2020-21 Budget Amendments As of 06/30/2021	FY 2020-21 Amended Budget	FY 2020-21 Revenue As of 06/30/2021	FY 2020-21 Percent of Amended Budget	FY 2019-20 Revenue As of 06/30/2020	Percent Revenue (dec.) FY21/FY20
Water Fund							
Revenue:							
Revenue from Investments	473,000		473,000	485,092	102.56%	552,104	-12.14%
Intergovernmental Revenue	0		0	111,567	0.00%	140,154	79.60%
Charges for Services	31,192,091		31,192,091	30,582,368	98.05%	28,727,512	6.46%
Miscellaneous Revenue	250,000		250,000	0	0.00%	17,601	-100.00%
Operating Transfer In	0		0	0	0.00%	3,089	-100.00%
Total Water Fund Revenue	31,915,091	0	31,915,091	31,179,027	97.69%	29,440,460	5.91%

Expense	FY 2020-21 Adopted Budget	FY 2020-21 Budget Amendments As of 06/30/2021	FY 2019-20 Carryover Encumbrances	FY 2020-21 Amended Budget	FY 2020-21 Exp. incl. Encumbr. As of 06/30/2021	FY 2020-21 Percent of Amended Budget	FY 2019-20 Exp. incl. Encumbr. As of 06/30/2020	Percent Exp & Enc Inc (dec.) FY21/FY20
Water Fund								
Expenses:								
Personnel Services	3,789,646	-102,838	0	3,686,808	3,633,401	98.55%	3,685,503	-1.41%
Services and Supplies	2,390,086	-89,334	458,263	2,759,015	2,310,574	83.75%	2,861,588	-19.26%
Wholesale Water Purchase	18,424,037		214,395	18,638,432	19,443,538	104.32%	18,612,316	4.47%
Debt Service							-	
Capital Outlay	540,000		282	540,282	506,483	93.74%	671,230	-24.54%
Operating Transfer Out	2,798,779		0	2,798,779	2,748,779	98.21%	2,741,851	0.25%
Total Water Fund Expenses	27,942,548	-192,172	672,940	28,423,316	28,642,775	100.77%	28,572,488	0.25%

Percent of Year	100%						
Revenue	FY 2020-21 Adopted Budget	FY 2020-21 Budget Amendments As of 06/30/2021	FY 2020-21 Amended Budget	FY 2020-21 Revenue As of 06/30/2021	FY 2020-21 Percent of Amended Budget	FY 2019-20 Revenue As of 06/30/2020	Percent Revenue (dec.) FY21/FY20
Sewer Fund							
Revenue:							
Revenue from Investments	202,000		202,000	625,357	309.58%	285,147	119.31%
Intergovernmental Revenue				13,761	0.00%	-	0.00%
Charges for Services	20,691,985		20,691,985	19,897,504	96.16%	19,293,825	3.13%
Miscellaneous Revenue	0		0	0	0.00%	-	0.00%
Operating Transfer In	0		0	0	0.00%	119,878	-100.00%
Total Sewer Fund Revenue	20,893,985	0	20,893,985	20,536,622	98.29%	19,698,850	4.25%

Expense	FY 2020-21 Adopted Budget	FY 2020-21 Budget Amendments As of 06/30/2021	FY 2019-20 Carryover Encumbrances	FY 2020-21 Amended Budget	FY 2020-21 Exp. incl. Encumbr. As of 06/30/2021	FY 2020-21 Percent of Amended Budget	FY 2019-20 Exp. incl. Encumbr. As of 06/30/2020	Percent Exp & Enc Inc (dec.) FY21/FY20
Sewer Fund								
Expenses:								
Personnel Services	2,711,569	-74,567	0	2,637,002	1,907,936	72.35%	1,955,343	-2.42%
Services and Supplies	1,587,387	-3,691	325,849	1,909,545	2,023,423	105.96%	1,697,655	19.19%
Treatment Plant	9,429,908		0	9,429,908	7,847,563	83.22%	5,947,282	31.95%
Debt Service	2,447,400		0	2,447,400	1,652,921	67.54%	1,143,477	144.55%
Capital Outlay	200,000		282	200,282	152,922	76.35%	282	54227.66%
Operating Transfer Out	1,635,433		0	1,635,433	1,635,433	100.00%	1,568,485	104.27%
Total Sewer Fund Expenses	18,011,697	-78,258	326,131	18,259,570	15,220,198	83.35%	12,312,524	23.62%

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one:	100-910-4237	\$100,845	100-120-4237	\$100,845
	400-910-4111	\$337,104	400-425-4111	\$337,104
☒ Budget Appropriation	235-2909	\$45,627	235-425-4423	\$45,627
	238-2909	\$15,344	238-424-4423	\$15,344
☐ Budget Transfer	214-2909	\$4,327	214-513-4111	\$4,327
	250-3553	\$116,369	250-536-4208	\$116,369

1. Review the FY 2020-21 Quarterly Financial Status Report for the Quarter Ending June 30, 2021.
2. Approve budget amendment recommendations

Background:

On June 2, 2020, the City Council approved the Fiscal Year (FY) 2020-21 Adopted Operating Budget in the amount of \$220.3 million and the General Fund Budget in the amount of \$117.0 million. Due to continued negative economic impact from COVID-19, the FY 2020-21 budget was rebalanced at mid-year. The City Council approved budget amendments that realigned revenue with updated projection and reduced personnel and non-personnel costs. Consistent with the fiscal reporting policies, staff monitors and tracks revenues and expenditures for all funds with an emphasis on the General Fund and Enterprise Funds.

Analysis:

This staff report provides the final quarterly update for FY 2020-21 on budget versus actual revenues and expenditures of the General, Water and Sewer Funds, based on unaudited financial reports as of June 30, 2021. Further, this staff report includes recommendations to close out the FY 2020-21 budget and implement the Council approved reserve policies.

Fourth Quarter Financial Status Report

The summary information below as well as the attachments provide an overview of the financial status for the General, Water, and Sewer funds for FY 2020-21 as of June 30, 2021, a variance analysis of budget versus actual revenues and expenditures for the fourth quarter of FY 2020-21 as well as prior year actual revenues and expenditures for the fourth quarter of FY 2019-20 for comparison purposes. The table summary briefly summarizes the unaudited General Fund FY2020-21 revenues, expenditures, use of reserves and surplus/(deficit).

General	FY2020-21	Unaudited	
Fund (\$ million)	Amended Budget	Actual	Budget Variance
Revenue	\$108.5	\$114.7	\$6.2
Use of Reserve	4.5	0	(4.5)
Expenditure	113.7	109.5	(4.2)
Net Operating Results	(0.7)	5.2	5.9

General Fund Revenues (Attachment 1)

For the twelve months ending June 30, 2021, the General Fund has received \$114.7 million in revenues, or 105.7%, of the FY 20-21 amended operating budget of \$108.5 million, which includes operating transfers in. The variance is primarily due to one-time revenues related to excess ERAF (property

tax), deferred building and planning services revenue and fire mutual aid intergovernmental revenues. The amended budget of \$108.5 million is comprised of the \$112.6 million of the adopted budget less budget amendments of \$4.1 million. A summary analysis on major revenue sources of unaudited figures is provided below.

- Property Taxes and Redevelopment Property Tax Trust Fund: For the twelve months ending June 30, 2021, \$41.1 million, or 111.4%, of the \$36.9 million of the amended budget has been received. Revenues are 8.7% higher than last year at the same time, due to a higher Excess ERAF payment received. The City received \$3.3 million in comparison with \$1.9 million budgeted for Excess ERAF. This \$1.4 million of favorable Excess ERAF is one-time and Santa Clara County cautions the City against relying upon this surplus in future years.
- Sales & Use Tax: For the twelve months ending June 30, 2021, \$23.8 million, or 102.1%, of the \$23.3 million amended budget has been received. Revenues are 5.1% less than last year at the same time which is due to the COVID-19 Virus and shelter-in-place orders for most of the fiscal year, resulting in less consumption overall. Measure F sales tax became effective April 1, 2021 and for the quarter ending June 30, 2021, the City received \$1.3 million, which closely aligns with the \$1.2 million amended budget.
- Franchise Fees: For the twelve months ending June 30, 2021, \$5.0 million, or 91.3%, of the \$5.5 million amended budget has been received. Revenues are 2.7% less than last year at the same time, mostly due to COVID-19 restrictions that shuttered businesses, resulting in a decrease of commercial waste.
- Hotel/Motel (TOT) Tax: For the twelve months ending June 30, 2021, \$4.2 million, or 102.8%, of the \$4.1 million amended budget has been received. Revenues are 63.0% lower than last year at the same time which is due to the COVID-19 shelter-in-place order and significant reduction of business and leisure travel.
- License and Permits: For the twelve months ending June 30, 2021, \$11.0 million, or 117.0%, of the \$9.4 million amended budget has been received. Revenues are 21.6% higher than last year at the same time due to the recognition of deferred building inspection and plan check fees for developer projects completed in FY 2020-21. Project timelines vary on a case-by-case basis and seldom within City control. Consequently, it is prudent to deem this as one-time revenue variance that provide additional fund balance resources, instead of on-going funding for General Fund operations.
- Charges for Services: For the twelve months ending June 30, 2021, \$4.6 million, or 92.3%, of the \$4.9 million amended budget has been received. Revenues are 14.8% lower than last year primarily due to COVID-19 cancellation of classes and activities that required Recreation fees refunds. The revenue reduction was offset with reduction in Recreation expenditures.

General Fund Expenditures (Attachment 2)

For the twelve months ending June 30, 2021, the General Fund expenditures was \$109.5 million (including encumbrance of \$2.8 million), which is \$4.2 million (3.7%) less than the amended budget of \$113.7 million. The budget represents the adopted appropriation of \$117.0 million, plus \$2.9 million of prior year encumbrances and reduced by the \$6.2 million due to rebalancing required by COVID-19 negative economic impacts. The magnitude and uncertainty of the pandemic impact required the City to defund 13.75 positions (full-time equivalent "FTE"). The fiscal year 2020-21 expenditures savings is primarily due to temporary vacancy savings (approximately \$3 million) and non-personnel savings (approximately \$1 million) due to reduced COVID-19 restrictions upon City operations. Consequently, it is prudent to deem this as one-time expenditure variance that provides additional fund balance resources, instead of on-going reductions of General Fund operating budget.

Unanticipated Expenditure Reserve

In accordance with the City Council approved Budget Guidelines, as part of the quarterly financial status reports, staff shall report on the use of the Unanticipated Expenditure Reserve for the 4th quarter.

Description	Amount
Additional Cleaning Services and Supplies	\$132,386
Communication and Outreach	7,862
Personal Protective Equipment (Isolation Suits/Face Shields, Nitrile Gloves and Masks, Sanitizing Wipes, Disinfectants)	74,765
First Responder UV Sterilizer	14,681
Legal Services (Best, Best and Krieger)	19,861
Mobile and County Testing Sites	36,404
Employee Quarantine Housing and Testing	13,567
Emergency Operations Center (EOC) Staffing	52,095
Miscellaneous COVID-19 Expenditures	687
Other Services (ARPA Advisory, Logo Design)	46,656
TOTAL for the Quarter Ending June 30, 2021	398,965

General Fund Reserve Policies Implementation

For the fiscal year ended June 30, 2021, the City's General Fund unaudited net operating result of \$5.2 million, with revenues of \$114.7 million and expenditures of \$109.5 million. This net operating result is deemed one-time because the favorable revenue variances are primarily non-recurring and the expenditure savings are predominately due to FY20-21 managed hiring freezes of non-essential positions and non-personnel budgetary savings related to COVID-19 service restrictions. While the FY 20-21 amended General Fund budget authorized \$4.48 million of Budget Stabilization Reserve (BSR) to balance the appropriation budget; the FY 20-21 net operating results mitigated the use of BSR. As a result, BSR May 11, 2021 remained at the \$17.09 million level. Reserves are a critical policy for fiscal resiliency and sustainability, which is critical during this time as COVID-19 and the Delta Variant are still underway.

Based on the General Fund unaudited FY 2020-21 operating expenditures of \$109.5, the reserve target for the Contingency Reserve and the Budget Stabilization Reserve (BSR) is set at \$18.25 million or 16.67% of approximately \$109.5 million. Consistent with the General Fund Reserve Policies, staff allocated the FY 2020-21 General Fund net operating result as follows: \$1.2 million to the BSR, \$1.0 million to the Contingency Reserve and \$2.8 million to PERS stabilization reserve, \$0.12 million to unassigned fund balance and \$0.1 million to other funds.

The table below shows the estimated Reserve Balances as of June 30, 2021, which is consistent with Council Reserve Policies.

General Fund Reserve Balances

	FY 2020-21 Reserve Balance (as of 5/11/2021)	FY 2020-21 Expenditure Savings Allocation/ Reserve Target Alignment	FY 2020-21 Reserve Balance (as of 6/30/2021)	Estimated Reserve Balance (6/30/2022)	Reserve Target per Fiscal Policies
Contingency Reserve	\$17.30	1.00	\$18.30	\$18.30	\$18.47
Budget Stabilization Reserve	17.09	1.21	18.30	18.30	18.47
Future Deficit Reserve	1.45		1.45	1.45	N/A
Unassigned	0.00	0.12	0.12	0.12	N/A
Total Unassigned Reserve	35.84	2.33	38.17	38.17	

Artificial Turf Replacement	1.21		1.21	1.21	2.00
Facilities Replacement Fund	7.00		7.00	7.00	10.00
CalPERS Rate Stabilization	33.90	2.80	36.70	36.70	N/A
Technology Replacement Reserve	2.00		2.00	2.00	5.00
Workers Compensation/ General Liability* Reserve	2.00		2.00	2.00	2.00
Total Committed General Fund Reserves	46.11	2.80	48.91	48.91	
Total Unassigned and Assigned Reserves	\$81.95	\$5.13	\$87.08	\$87.08	

* Prior to FY 2020-21, this Reserve was not budgeted and only shown in the Annual Comprehensive Financial Report.

Water Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2021, \$30.6 million of charges for services, or 98.1%, of the \$31.2 million budgeted has been received. Total revenue received amounts to \$31.2 million, or 97.7%, of the \$31.9 million budgeted.

Expenditures: For the twelve months ending June 30, 2021, \$28.6 million, or 100.8%, of the \$28.4 million amended budgeted has been spent.

Water Fund Expenditure Savings: For the fiscal year ended June 30, 2021, the Water Fund realized unaudited revenues of \$31,179,027 and expenditures of \$28,642,775 This resulted in a one-time Water Fund expenditure savings of \$2,536,252.

Sewer Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2021, \$19.9 million of charges for services, or 96.2%, of the \$20.7 million budgeted has been received. Total revenue received amounts to \$20.5 million, or 98.3%, of the \$20.9 million budgeted.

Expenditures: For the twelve months ending June 30, 2021, \$15.2 million, or 83.4%, of the \$18.3 million amended budgeted has been spent.

Sewer Fund Expenditure Savings: For the fiscal year ended June 30, 2021, the Sewer Fund realized unaudited revenues of \$20,536,622 and expenditures of \$15,220,198 This resulted in a one-time Water Fund expenditure savings of \$5,316,424.

Budget Amendment Recommendations

Staff recommends approval of five budget amendments to align appropriations to actual expenditures incurred, services rendered, and revenues received.

1. Expenditure Adjustment Recommendations

- a. Increase City Attorney's operating budget from General Fund Non-Departmental budget for Attorney services for \$100,845 for unanticipated services performed
- b. Increase Public Works Water Fund operating budget from Water Fund Non-Departmental budget for \$337,104 due to personnel cost
- c. Increase Public Works LLMD 95 operating budget from LLMD 95 fund balance for \$45,627 due to unexpected utility cost
- d. Increase Public Works LLMD 98 operating budget from LLMD 98 fund balance for \$15,344 due to unexpected utility cost
- e. Increase Building Safety and Neighborhood CDBG budget from CDBG grant revenue for \$116,369 due to encumbrance adjustment
- f. Increase Planning Fund 214 operating budget from Fund 214 fund balance for \$4,327 due higher than expected personnel cost

Fiscal Impact:

For the fiscal year ended June 30, 2021, the City's General Fund unaudited net operating result of \$5.2 million, with revenues of \$114.7 million and expenditures of \$109.5 million. This result is primarily from one-time revenues and expenditure savings. If Council approves the recommendations outlined in this report, there is no fiscal impact to General Fund, Water Fund and CDBG fund balance. The LLMD 95 fund balance will be reduced by \$45,627, the 2008 Community Facility District fund balance will be reduced by \$15,344 and the Community Planning Fund fund balance will be reduced by \$4,237.

California Environmental Quality Act:

Not applicable.

Recommendation:

Review the FY 2020-21 Quarterly Financial Status Report for the Quarter Ending June 30, 2021.

Attachments:

1. FY 2020-2021 Revenue Report for Fiscal Year-To-Date June 30, 2021
2. FY 2020-2021 General Fund Expenditures by Department June 30, 2021
3. FY 2020-2021 Water and Sewer Funds Financial Status for Fiscal Year-To-Date June 30, 2021
4. Budget Change Form

☐ Check if City Council Approval required.

Meeting Date: September 07, 2021

Requested by:	Department Head: Not Applicable	Date: September 07, 2021
Reviewed by:	Finance Director: Lauren Lai	Date: September 07, 2021
Date approved by City Council, if required:		Confirmed by:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive a report on the proposed project proposal for moderate income housing at Turing Apartments through a California Statewide Communities Development Authority program and provide direction to staff on next steps, if any.
Category:	Leadership and Support Services
Meeting Date:	9/21/2021
Staff Contact:	Ashwini Kantak, Assistant City Manager, 408-586-3053 Sharon Goei, Building Safety and Housing Director, 408-586-3260
Recommendations:	1. Receive a report on the proposed project proposal for moderate income housing at Turing Apartments through a California Statewide Communities Development Authority program. 2. If Council wishes to pursue the proposed project, (a) provide input to staff on the preliminary recommendations; (b) direct staff to bring back a framework and goals for this type of a moderate income housing program for Council consideration based on staff recommendations and Council input, and (c) direct staff to bring back for Council consideration along with a revised project proposal consistent with the framework and goals for a moderate income housing program.

Executive Summary

In June 2021, Council directed staff to analyze a proposal to join the Community Improvement Authority (Authority), an affiliate of the California Statewide Communities Development Authority (CSCDA), and to support the purchase of the Turing Apartments for the purpose of converting the 371-unit market rate project to moderate income housing.

This program is premised on providing potential benefits that include: creating moderate income housing; providing management and oversight of the project without City resources; and providing a valuable asset to the City at the end of the bond term. However, it is important for the Council to look at the assumptions of the project as well as consider implications of no City oversight, control, or assurance of affordability, for a project that will be indirectly associated with the City and could be a City asset in the future.

The consultant and staff note four key areas for Council consideration and discussion:

1. Level of affordability;
2. Financial projections and assumptions;
3. Level of capital investment; and
4. Transparency and oversight.

As an example with Level of Affordability, the proposed discounts to current rents at the Turing Apartments would still place the rents higher than the market rents. Furthermore, if the rate of rent increases is adjusted to be in line with past historical trends, the value of the asset at the end of the bond term becomes significantly lower than projected by the project team. Also, since the City will be receiving the asset in “as-is” condition after the bonds are paid off, it is important to ensure that the asset will be maintained in good condition; the

planned dollars for capital investment are not based on a project condition report for the term of the bond. Lastly, since the City does not have a role in oversight and management of the project, it will be important to require adequate transparency, reporting, and oversight on how the affordability covenants are implemented and enforced and how the property is managed.

Another area of consideration for Council is the impact to the General Fund. Over a 30-year period, it is estimated that the City would forego a total of \$15.4 million (\$9.7 million in 2021 dollars) of property tax revenue, comprised of \$12.4 million of ad valorem property tax revenue and \$3 million of property tax in-lieu of vehicle license fee revenues from the state that are linked to taxable assessed property values. Other taxing entities would forego a total of approximately \$77.5 million in property tax revenue. Thus, including all taxing agencies, foregone tax revenues would approximate \$92.9 million over a 30-year period. The City would not be responsible for repaying the revenues forgone by the other taxing entities. Staff also notes that the analysis of the proposed project required a significant amount of staff resources. If Council directs additional work on this project or other similar moderate income housing programs, staff will need to bring back information on costs for additional resources and impacts on other workplan items for Council direction.

If Council wishes to pursue this specific project, staff recommends follow up on the preliminary recommendations as a next step. Additionally, staff recommends developing a framework and goals for a moderate income program, based on staff recommendations and Council input, and bringing back a revised proposal for Council consideration, consistent with the framework and goals for a moderate income housing program.

Background:

The greater Bay Area is experiencing a housing crisis of unaffordability. As home prices and rents continue to increase, the result has disproportionately affected long term, lower income residents in Milpitas who do not have the financial resources to remain in the area. The City Council has taken measures to minimize the impact of the overall housing crisis by providing direct aid to Milpitas residents and families and adopting policies to increase affordable housing.

For example, in late 2019, the Milpitas Rent Relief Program began as a pilot program to aid renters experiencing emergency housing assistance needs. Its prescient formation was instrumental in delivering immediate aid to those most affected by COVID-19, as other jurisdictions were in the process of creating similar programs. To date, the program has provided assistance to over 100 families with over 300 Milpitas residents.

Other similar programs adopted by the Council are intended to ensure that Milpitas residents avoid displacement and are protected from the rising cost of housing. Some examples include the Rent Review and Just Cause Eviction Protection Urgency Ordinances, housing services funded by Community Development Block Grants, and a new Mortgage Relief Program and expanded Rent Relief Program eligibility to be created with the American Rescue Plan Act funding.

For affordable housing production, the City Council adopted an inclusionary ordinance in 2018 to increase the supply of affordable units in the community. Currently, the City has approximately 50 moderate-income units that are projected to be built in the next few years. While this helps, it is not sufficient to meet the Regional Housing Needs Allocation goal of 565 units in the moderate-income category. State financing tools for moderate-income rental housing are also limited. For the next Regional Housing Needs Allocation cycle, through the upcoming Housing Element and Assessment of Fair Housing, the City will plan for new housing growth in a way that responds to the City's unique context and to promote fair housing opportunities throughout the community.

On May 11, 2021, at the request of Councilmember Phan, the City Council directed staff to retain a consultant to analyze a proposal by Lyon Living (Owner) to convert the apartments at Turing to moderate income housing via a California Statewide Communities Development Authority (CSCDA) program. The project team is comprised of the Owner, CSCDA, and Waterford Residential (Administrator). Since this direction was received, staff have been approached by several other entities to request consideration of similar programs.

In order for this proposal to move forward the City would need to join the Community Improvement Authority (Authority), which is an affiliate of CSCDA, and support the conversion through the adoption of a resolution and approval of a public benefit agreement. Council directed that all consultant costs were to be paid for by the project Owner.

In consultation with the project team, City staff retained the services of Keyser Marston Associates, Inc. (Consultant). At the time of preparation of the consultant professional services agreement in June, the consultant services were estimated to cost \$38,000. Due to additional meetings and analytical work starting in late August, including meetings with the project team and Housing Subcommittee, and further anticipated work, the Consultant updated the estimated service costs to \$63,000. The project Owner agreed to fund this amount for consultant services.

Staff asked the Consultant to review the proposal from the project team and to assess the following:

1. The degree to which the proposed rent reductions will enhance the affordability of the project and meet the City's affordable housing objectives.
2. The potential financial returns to the City relative to the value of foregone property tax revenues over the 30+ year term.
3. Economic aspects of transaction structure and potential risks and liabilities to the City.
4. The factors that led three other cities to decline to participate in a similar offer by CSCDA.

To undertake this review, the Consultant received and reviewed the following:

1. Financial pro forma information provided by the proposed Project Administrator, Waterford Residential. The information provides estimates of sources and uses of funds for the purchase of the Project by the Authority, proposed reductions in unit rental rates, anticipated operating projections for a 34-year term and anticipated reversion value to the City of Milpitas upon conveyance. Waterford also provided recent property tax assessments, an appraisal of the property, and a property condition report.
2. A Draft Public Benefit Agreement for execution by the CSCDA Community Improvement Authority (Owner) and the City of Milpitas (Host).
3. A Draft Project Administration Agreement for execution by the CSCDA Community Improvement Authority (Owner) and Waterford Property Company, LLC (Administrator).
4. Draft Purchase and Sale Agreement for execution between Milpitas -District 1 Owner, LLC (Owner) and Waterford Residential 8, LLC (Buyer).
5. Draft Property Management Agreement between CSCDA Improvement Authority (Owner) and Greystar California, Inc. (Manager).
6. Information from the City of Milpitas regarding the City's affordable housing goals. Market information from CoStar and other public sources on the City of Milpitas and the subject property.
7. Santa Clara County Controller data on ad valorem property taxes and property tax assessments that apply to the Project.
8. A sample trust indenture, which Waterford proposes would be similar to the indenture for the Turing transaction.

Time was of the essence for the project team and the Consultant and City staff did their best to complete and review the analysis respectively.

Analysis:

The Consultant prepared a draft report which was shared with the project team and discussed with them on August 27. The proposed program would convert 371 market rate units at the Turing Apartments in Milpitas into moderate income housing. This would be made possible by the sale of the property to the California Statewide Communities Development Authority (CSCDA), which is a Joint Powers Authority. The abatement of property taxes would reduce the Project's operating expenses, which in turn would enable the Authority to decrease monthly rental rates.

Under the terms of the program, the rental rates being charged to existing income eligible residents would be decreased by approximately 10%, as existing leases are renewed. Annual rent increases over the 34-year bond term would be limited to the lesser of the annual increase in the Area Median Income (AMI) or 4%. Rents on units that turn over would be subject to the maximum permitted rents under the Regulatory Agreement. Existing residents who do not meet the income requirements would not be displaced. During the regulatory

term, the City of Milpitas would not bear any responsibility or liability for the operation of the Project or the repayment of the bonds. The Authority is a public entity separate and apart from its members, and any debts or obligations incurred by the Authority will not constitute debt or obligations of its member agencies. The term for the repayment of the bonds is anticipated to be 34 years. The City, at its sole discretion, would be permitted to purchase or force a sale of the Project at any time between year 15 and the end of the bond term. The net proceeds from the sale of the Project after the payment of any outstanding debt would accrue to the City. The Project would be conveyed on an “as-is” basis and the City or future owner would be responsible for making any needed capital improvements as well as paying ad valorem property taxes, which would be reinstated (unless the new owner is a non-profit and eligible for abatement).

Key Considerations

Affordability Considerations

1. The proposed program would provide restricted rents for existing tenants that are within HCD’s limits for Moderate Income housing, for a period of 34 years.
2. Under the proposal, rental rates charged to existing tenants would be decreased by a percentage ranging from 8% to 12%, with an average monthly saving of \$323 per unit. Keyser Marston Associates, Inc. Page 2 [\\SF-FS2\wp\16\16005\015\001-004.docx](#)
3. The Turing commands premium rents relative to other market rate projects in Milpitas. As a result, even with an average 10% reduction in rental rates, the proposed reduced rental rates would exceed average market rental rates in Milpitas.
4. The rental rates to be charged on new tenants as spaces turn over would be subject to the CSCDA maximum rents, which exceed market area rents and, in most cases, exceed the current market rate rents currently charged by Turing.
5. Given that the proposed reduced rents would exceed average market rate rents in Milpitas and that the rents on new leases would likely be significantly higher than the market rate rents in Milpitas, the Project’s affordability benefits are, at best, very limited.
6. The rent restrictions will not provide the City with any credit towards meeting its Regional Housing Needs Allocation, which is of critical importance to the City of Milpitas

Financial Feasibility Considerations

1. The Project’s financing does not require an investment of cash equity and all debt is secured solely by the revenue generated by the Project. The structure of the transaction provides significant up-front compensation to the Administrator (Waterford) (\$4.25 million), CSCDA (\$1.25 million), and the current owner of the Project (\$235.25 million). In contrast, the potential financial returns to the bond holders, the City and other taxing agencies are entirely at risk and subject to the financial performance of the Project.
2. The cash flow is based on an assumption that rents will increase by 3% every year. This is not supported by historical data.
3. The money set aside for capital investment is based upon a project condition report for the first 12 years of the project and does not envision major infrastructure projects that may be required over the 34 year term of the bond. For example, the condition report currently does not anticipate investment in infrastructure elements that will need replacement between 12 and 34 years such as, the roof, windows, doors, or landscaping.

Preliminary Recommendations

Based on the consideration noted above and if Council chooses to participate in the proposed CSCDA program at Turing, the Consultant has developed several preliminary recommendations, which staff concurs with.

1. The rent reductions should be set at levels that are below market rate levels in Milpitas so that the Project truly delivers enhanced affordability. The proposed rent levels exceed average market rate

rental rates, which largely nullifies the argument that the Project will enhance the affordability of apartments in Milpitas.

2. Rent and income restrictions contained in the Regulatory Agreement should conform to the Department of Housing and Community Development (HCD) income and rent formulas. As proposed, the rent and income formulas are not consistent with the HCD formulas and result in significantly higher rents than what would be permitted by HCD.
3. The Property Condition Report should address the Project's needs for a 34-year term and the Project's financing plan provide funding to cover the anticipated capital improvement costs over the 34-year term. The draft property condition report only addresses 12 years of needs. The proposed annual contributions for capital improvements appears to be inadequate.
4. Any refinancing of Project debt should be subject to the City's approval.
5. The Project should be required to submit proposed rent increases to the City's approval to ensure that the affordability restrictions are enforced.
6. The Project should be required to submit an annual report to the City demonstrating that the affordability covenants are being properly implemented and enforced.
7. The Administrator should be obligated to certify that the affordability covenants are being properly implemented and enforced.
8. The Project's cash flow projection should be based on more conservative assumptions to reduce the level of risk and provide greater assurance for long-term viability.
9. The bond underwriting assumptions should be reviewed by an underwriter retained by the City and the City's Financial Advisor to ensure that the financial structure is sound and consistent with industry standards for multifamily revenue bonds and is appropriate for the City's participation.
10. Greystar (Manager) should be required to submit its tenant selection plan, maintenance plan, staffing plan and marketing plan for the City's approval.
11. Greystar (Manager) should be required to submit annual reports on the Project's operations, including the Project's rent roll, that clearly track the annual increase in rental rates, operating expenses, capital improvements, vacancy rates, bond interest and redemption payments, and all bond specific payments.
12. In addition to the preliminary recommendations developed by the consultant, the City should consider entering into an agreement with the project team so as to clearly capture the roles of the project team and the City through the term of the bond and to describe the process for enforcement.

City Council Housing Subcommittee

This topic was agendaized for discussion at the City Council Housing Subcommittee on September 2 and 9, 2021.

On September 2, 2021, the City Council Housing Subcommittee convened to hear a presentation from the Waterford Property Company and CSCDA on the proposed acquisition of the Turing Apartments and its conversion to a workforce housing community. Their presentation provided an overview of the moderate income housing program, the specifics of the Turing Apartments proposal, and an overview of the benefits to the City.

A representative of the Consultant was also present to discuss the findings from the draft report. The Consultant summarized the report findings relating to affordability considerations, financial feasibility considerations, the economics of the transaction structure and potential risks to the City, and a list of recommendations should the City decide to move forward with this proposal.

Councilmember Chua requested a second meeting to further discuss the financial analysis, with specific requests to discuss the repayment of the bond term, bond insurance, property insurance, replacement coverage, and housing availability for tenants during replacement.

Councilmember Phan was interested in an option discussed by Waterford to deepen affordability and agreed that another meeting and more time was needed to discuss the exit value of the property and how the project would be maintained over time.

On September 9, 2021, the City Council Housing Subcommittee held another meeting to further discuss the proposed project and asked follow-up questions.

Councilmember Chua expressed concern over the structure of the project including the fact that Waterford and CSCDA would receive their payment upfront and that payment is not based on performance metrics. The Councilmember also expressed concern that the City was not an oversight partner with the project administrator. The City Attorney representative noted that under this arrangement, the City has no local control or oversight of the project.

Councilmember Phan expressed optimism that the benefits of the project outweigh the potential concerns. The Councilmember noted that Milpitas is in search of housing options for Milpitas residents now, and that this project could serve as a model for other developments regionwide. The Councilmember also expressed a desire to participate in additional similar projects in the future.

Benchmarking

According to a September 13, 2021 Orange County Register article about middle income housing programs, there are 28 middle income housing programs in California, with 21 of them established in 2021, across 16 cities. Of the 28 programs, more than half are located in Southern California, with the rest located in the larger San Francisco Bay Area. There are no programs currently established in Santa Clara County. The closest cities to Milpitas that have one or more of these programs are Dublin and Hayward. The three largest cities in the Bay Area, San Jose, San Francisco, and Oakland did evaluate participation in these programs but decided not to participate.

The San Jose City Council voted not to move forward under this program structure for a variety of reasons. The program gave the City no way to enforce the affordability restrictions. Staff had concerns about the amount of debt the project would carry and whether the bond would actually be repaid in 30 years. The 100% and 120% AMI affordable rent levels were close to market rates rents. Thus, the City did not see a significant affordability benefit to its residents.

The City of Santa Clara also evaluated participation in the program but did not move forward with the proposed workforce housing project. Their reasons echoed those expressed by the City of San Jose, and the units not being able to count toward the Regional Housing Needs Allocation was also a concern.

Staffing Resources

Over the past year, while staff resources were already fully committed to delivering existing services and programs, several new programs and initiatives have been added because of increased federal funding and other Council funded priorities. These include managing the \$1.28 million CDBG and Coronavirus funding compliance process and conducting monitoring and reporting with 23 contract service providers; implementing homeless outreach, assessment, street-based case management services and analyzing monthly data; implementing mobile shower and laundry services for unhoused residents; and working with the Homelessness Task Force and Santa Clara County on homeless resources. Staff has also been working on other major policy initiatives including monitoring the Regional Housing Needs Allocation process; preparing for the Housing Element update and Assessment of Fair Housing; updating the Affordable Housing Ordinance; tracking housing legislation; exploring strategies for the development and disposition of City-owned properties on South Main Street; and developing a new Consolidated Plan for CDBG.

Earlier in 2021, staff was approached with several inquiries regarding other potential moderate-income housing programs and project. If Council provides direction for staff to continue to work on this project as well as other similar projects, staff will need to bring back a discussion to Council on the need for additional resources and prioritization of other workplan items. It is important to note that staff may not be able to pause work on many of the workplan items since there are state and federal requirements associated with those items.

Policy Alternative:

Not Applicable

Fiscal Impact:

Although the consultant costs will be paid for by the Owner, staff has spent a substantial amount of time working with the consultant and project team. If the City moves forward with this proposed project, over a 30-year period, it is estimated that the City would forego a total of \$15.4 million or approximately (\$9.7 million in 2021 dollars) of property tax revenue, comprised of \$12.4 million of ad valorem property tax revenue and \$3.0 million of property tax in-lieu of vehicle license fee revenues from the state that are linked to taxable assessed property values. Including all taxing agencies, foregone tax revenues would approximate \$92.9 million over a 30-year period. At the end of the bond term, the City may be able to recoup this lost revenue. However the amount will depend on the project performance over the term of the bond and the current project performance assumptions may be optimistic, which causes the risk of overstating the net return to the City.

California Environmental Quality Act:

This item is not a Project under CEQA in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) as it can be seen with certainty that a general discussion of funding priorities by the City Council will not have a significant effect on the environment. Further, the item is also not a Project pursuant to CEQA Guidelines Section 15378(b)(4) as it is a government fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

Recommendation

1. Receive a report on the proposed project proposal for moderate income housing at Turing Apartments through a California Statewide Communities Development Authority program.
2. If Council wishes to pursue the proposed project, (a) provide input to staff on the preliminary recommendations; (b) direct staff to bring back a framework and goals for this type of a moderate income housing program for Council consideration based on staff recommendations and Council input, and (c) direct staff to bring back for Council consideration along with a revised project proposal consistent with the framework and goals for a moderate income housing program.

Attachments:

1. Keyser Marston Associates report dated 9/16/2021



KEYSER MARSTON ASSOCIATES

AFFORDABLE HOUSING AND ECONOMIC CONSIDERATIONS CSCDA COMMUNITY IMPROVEMENT AUTHORITY PROPOSAL TURING APARTMENTS

Prepared for:
City of Milpitas

Prepared by:
Keyser Marston Associates, Inc.

September 15, 2021

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I. EXECUTIVE SUMMARY

A. Summary of CSCDA Program

The City of Milpitas is considering joining the Community Improvement Authority (Authority), which is an affiliate of the California Statewide Communities Development Authority (CSCDA) and supporting the purchase of the Turing Apartments for the purpose of converting the 371-unit market rate project to Moderate income housing.

The Authority would be exempt from the payment of all ad valorem property taxes. The abatement of property taxes would reduce the Project's operating expenses, which in turn would enable the Authority to decrease monthly rental rates.

Under the terms of the program, the rental rates being charged to existing income eligible residents would be decreased by approximately 10% with an average reduction of \$323 per month, as existing leases are renewed. Annual rent increases over the 34-year bond term would be limited to the lesser of the annual increase in the Area Median Income (AMI) or 4%. Rents on units that turn over would be subject to the maximum permitted rents under the Regulatory Agreement. Existing residents who do not meet the income requirements would not be displaced.

During the regulatory term, the City of Milpitas would not bear any responsibility or liability for the operation of the Project or the repayment of the bonds. The Authority is a public entity separate and apart from its members, and any debts or obligations incurred by the Authority will not constitute debt s or obligations of its member agencies.

The term for the repayment of the bonds is anticipated to be 34 years. The City, at its sole discretion, would be permitted to purchase or force a sale of the Project at any point between year 15 and the end of the bond term. The net proceeds from the sale of the Project after the payment of any outstanding debt would accrue to the City. The Project would be conveyed on an "as is" basis and the City or future owner would be responsible for making any needed capital improvements as well as paying ad valorem property taxes, which would be reinstated (unless the new owner is a non-profit and eligible for abatement).

B. Affordability Considerations

1. The proposed program would provide restricted rents for existing tenants that are within HCD's limits for Moderate Income housing for a period of 34 years.
2. Under the proposal, rental rates paid by existing tenants would be decreased by 8% to 12%, with an average monthly saving of \$323 per unit.

3. The Turing commands premium rents relative to other market rate projects in Milpitas. As a result, even with an average 10% reduction in rental rates, the proposed reduced rental rates would exceed average market rental rates in Milpitas.
4. The rental rates to be charged on new tenants as spaces turn over would be subject to the CSCDA maximum rents, which exceed market area rents and, in most cases, exceed the current market rate rents currently charged by Turing.
5. Given that the proposed reduced rents would exceed average market rate rents in Milpitas and that the rents on new leases would likely be significantly higher than the market rate rents in Milpitas, the Project's affordability benefits are, at best, very limited.
6. The rent restrictions will not provide the City with any credit towards meeting its Regional Housing Needs Allocation, which is of critical importance to the City of Milpitas

C. Financial Feasibility Considerations

The Project's financing does not require an investment of cash equity and all debt is secured solely by the revenue generated by the Project. The structure of the transaction provides significant up-front compensation to the Administrator (Waterford), CSCDA, and the current owner of the Project. In contrast, the potential financial returns to the bond holders, the City and other taxing agencies are entirely at risk and subject to the financial performance of the Project.

1. The projected payments to the parties are as follows:

Exhibit 1: Proposed Compensation to Parties

	Funded from bond proceeds	Funded from cash flow
Seller of Turing (affiliate of Lyon Living)	\$235,250,000	None
CSCDA	\$1,250,000	Year 6+: \$250,000 annually
Administrator (Waterford)	\$4,250,000 up front; \$5,000,000 upon sale after year 15	Year 6+: \$250,000 annually, escalated at 3%
Greystone	None	1.75% of gross effective income; \$18,000 monthly minimum.
Costs of Issuance	\$7,421,000	

2. Over a 30-year period, it is estimated that the City would forego a total of \$15.4 million (\$9.7 million in 2021 dollars) of property tax revenue, comprised of \$12.4 million of ad valorem property tax revenue and \$3.0 million of property tax in-lieu of vehicle license fee revenues from the state that are linked to taxable assessed property values. Including all taxing agencies, foregone tax revenues would approximate \$92.9 million over a 30-year period.

3. Compensation to the City is limited to net sales proceeds after the payment of all outstanding debt, which will not occur until sometime after the completion of the Project's 15th operating year and the end of the bond term, which is scheduled for the end of the 34th operating year.
4. As proposed, required annual debt service on the bonds will consist of only interest payments. The bonds will be redeemed only if there is available cash flow. It is not anticipated that the bonds will receive an investment grade rating by any of the primary bond rating agencies.
5. The cash flow projections prepared by the Administrator (Waterford Residential) assume that rents will increase at a steady rate of 3% per year, which is aggressive given that the Area Median Income has increased at an average annual rate of 2.2% and the average market rate rents for apartments in Milpitas has increased at an average annual rate of 2.8% over the past ten years.
6. The projected performance of the Project is driven by many factors. Small deviations from projected rent increases, interest income, and operating expenses could have significant impacts on the Project's ability to pay down the outstanding bond principal, the Project's viability, and the amount of net sales revenue that will be available to reimburse the City for foregone property tax revenue.
7. The Project's funding for capital reserves appears to be inadequate to meet the Project's needs throughout the 35-year projected regulatory period, which would result in the need for the City to fund capital improvements upon the transfer of the property to the City.
8. Net proceeds to the City will be driven by the Project's performance. As shown in Exhibit 2, based on the projection prepared by Waterford, the City could receive approximately \$127.4 million (2021 dollars)¹ of net return if the Project is sold at fair market value at the end of the Project's 30th operating year, only the City's foregone tax revenues are recovered, and the Project is not in need of additional capital improvements beyond the funding identified in the projection. Net receipts would decline to \$95.5 million if all taxing agencies are reimbursed for ad valorem tax revenues that were not received while the Project was owned by the Authority and exempt from ad valorem property taxes.

However, if rents grow at a more conservative rate of 2% per year, and the Project is in need of an assumed \$28.2 million of capital improvements (\$10 million in 2021 dollars) to ready the property for sale, it is projected that the City would receive only \$24.2 million of net return². This is a marginal return given the risk associated with the Project. And,

¹ For purposes of this analysis, future dollars have been discounted at 3% per year, to provide an estimate of the current value, net of inflation.

² The cash flow projection reflecting a 2% annual increase in rents indicates that the Project could not be sold at the end of the 15th operating year because the cash flow will be insufficient to retire outstanding debt.

under this scenario, net sale proceeds would not be sufficient to fully reimburse all taxing agencies for foregone tax revenues.

Exhibit 2: Projected Financial Returns to City of Milpitas

Sale in Year 30, \$millions	Scenario A: Waterford Projection (3% Annual Growth in Rental Income)	Scenario B: Less Aggressive Projection (2% Annual Growth in Rental Income +\$28.2 million capital improvement in year 30)
Net Proceeds After Debt	\$324.7	\$102.4
Foregone City Property Taxes and Property Taxes In-lieu of Motor Vehicle License Fees ³	\$15.4	\$15.4
Net Return to City After Reimbursement of Foregone City Taxes and \$28.2 million additional capital improvement (Scenario B)	\$309.2	\$58.8
Net City Return in 2021 Dollars if only Foregone City Taxes are Reimbursed and \$28.2 million of additional capital improvements are funded (Scenario B)	\$127.4	\$24.2
Net City Return in 2021 Dollars if All Taxing Agencies Are Reimbursed	\$95.5	\$0 (Net Proceeds are insufficient to provide full reimbursement to taxing agencies)

D. Recommendations

If the City elects to participate in the CSCDA program, we recommend the following:

1. The rent reductions should be set at levels that are below market rate levels in Milpitas so that the Project truly delivers enhanced affordability. The proposed rent levels exceed average market rate rental rates, which largely nullifies the argument that the Project will enhance the affordability of apartments in Milpitas.
2. Rent and income restrictions contained in the Regulatory Agreement should conform to the Department of Housing and Community Development (HCD) income and rent formulas. As proposed, the rent and income formulas are not consistent with the HCD formulas and result in significantly higher rents than what would be permitted by HCD.
3. The Property Condition Report should address the Project's needs for a 34-year term and the Project's financing plan and cash flow should provide funding to cover the anticipated capital improvement costs over the 34-year term. The draft property

³ The City also currently receives a reimbursement of a portion of property taxes that are allocated to the Education Revenue Augmentation Fund.(ERAF) in excess of the amount needed to fund schools, which is commonly referred to as Excess ERAF. The magnitude of reimbursement may change over the bond term and, for purposes of this analysis, has not been included as foregone revenue to the City. It is captured as a foregone revenue to ERAF.

condition report only addresses 12 years of needs. The proposed annual contributions for capital improvements appears to be inadequate.

4. Any refinancing of Project debt should be subject to the City's approval.
5. The Project should be required to submit proposed rent increases to the City's approval to ensure that the affordability restrictions are enforced.
6. The Project should be required to submit an annual report to the City demonstrating that the affordability covenants are being properly implemented and enforced.
7. The Administrator should be obligated to certify that the affordability covenants are being properly implemented and enforced.
8. The Project's cash flow projection should be based on more conservative assumptions to reduce the level of risk and provide greater assurance for long-term viability.
9. The bond underwriting assumptions should be reviewed by an underwriter retained by the City and the City's Financial Advisor to ensure that the financial structure is sound and consistent with industry standards for multifamily revenue bonds and is appropriate for the City's participation.
10. Greystar should be required to submit its tenant selection plan, maintenance plan, staffing plan and marketing plan for the City's approval.
11. Greystar should be required to submit annual reports on the Project's operations, including the Project's rent roll, that clearly track the annual increase in rental rates, operating expenses, capital improvements, vacancy rates, bond interest and redemption payments, and all bond specific payments.

E. Modifications Proposed by Authority to Housing Subcommittee on September 9, 2021

In its presentation to the City's Housing Subcommittee on September 9, 2021, the Authority indicated that it is amending its proposal to the City as follows:

1. Changing the mix of affordability levels as follows:

Existing Proposal	Amended Proposal
33% (124) of the project's units to be restricted at 60% to 80% of AMI	40% (148) of the project's units to be restricted at 60% to 80% of the AMI
33% (124) of the project's units to be restricted at 81% to 100% of AMI	20% (74) of the project's units to be restricted at 81% to 100% of the AMI

33% (124) of the project's units to be restricted at 101% to 120% of AMI	40% (148) of the project's units to be restricted at 101% to 120% of the AMI
\$2,827 average unit monthly rental rate	\$2,827 average unit monthly rental rate

While the proposal would change the mix of affordability, the average level of affordability and proposed rent is not changed. Therefore, the proposal does not reflect an overall deepening of affordability. KMA continues to recommend that the proposal be revised to deepen the level of affordability.

2. Increasing funding for capital improvements as follows:

Existing Proposal	Amended Proposal
\$3.06 million from bond issuance	\$5 million from bond issuance
\$700 per unit per year, starting in year 10	\$1,000 per unit per year, starting in year 10

These changes will provide approximately \$4.28 million of additional funding (\$3.2 million in 2021 dollars) for capital improvements over a 30-year term. This change is not responsive to KMA's recommendation that the property report, which evaluated the property's needs over the first twelve (12) years be revised to estimate the property's needs over the bond term and for the proposal to provide the level of funding recommended by the revised property report through a combination of bond proceeds and annual cash flow contributions.

Neither of the two proposed modifications change KMA's recommendations.

II. INTRODUCTION

The City of Milpitas is considering joining the Community Improvement Authority (Authority), which is an affiliate of the California Statewide Communities Development Authority (CSCDA) and supporting the purchase of the 371-unit Class A Turing Apartments (Project) located at 1365 McCandless Drive for the purpose of converting the market rate project to Moderate-income rental housing. CSCDA is a joint powers authority founded and sponsored by the League of California Cities and the California State Association of Counties. It was created in 1988 to enable local government and eligible private entities to access low-cost, tax exempt financing for projects that provide public benefits. CSCDA has more than 530 cities, counties and special districts as “members” and has issued more than \$65 billion through more than 1,700 transactions. CSCDA Community Improvement Authority is a recently established JPA that is focused on supporting moderate-income housing production. At least three projects have closed financing. Although the Authority has a limited operating history, the Authority’s program partners (including Waterford Residential) are in discussion with cities throughout the state regarding Projects similar to the Turing. The cities are in different stages of review and due diligence.

As proposed, the City would join the Authority, approve the form of a Public Benefit Agreement, and approve the JPA’s issuance of tax-exempt bonds for the acquisition of the Turing Apartments. The Project would be owned by the Authority and income and rent restrictions would be recorded on the Project that would restrict approximately 33% of the units to households earning up to 80% of the Area Median Income (AMI), 33% to households earning up to 100% of the AMI, and 33% to households earning up to 120% of the AMI for a minimum period of 34 years

The Authority would be exempt from the payment of all ad valorem property taxes. The abatement of property taxes would reduce the Project’s operating expenses, which in turn would enable the Authority to decrease monthly rental rates. The value created by the property tax abatement and tax-exempt financing would also enhance the supported sales price of the Project and provide funding for a Project Administrator, who would facilitate the transaction and be administer the Project on the Authority’s behalf.

Under the terms of the program, the rental rates being charged to existing income eligible residents would be decreased by specified amounts as existing leases are renewed and annual rent increases over the bond term would be limited to the lesser of the annual increase in the Area Median Income (AMI) or 4%⁴. Rents on units that turn over would be subject to the maximum permitted rents under the Regulatory Agreement. Existing residents who do not meet the income requirements would not be displaced.

⁴ The specific terms would be subject to negotiation between the City, the JPA, and the bond issuing company.

During the regulatory term, the City of Milpitas would not bear any responsibility or liability for the operation of the Project or the repayment of the bonds. The Authority is a public entity separate and apart from its members, and any debts or obligations incurred by the Authority will not constitute debts or obligations of its member agencies. If the City were to proceed with the program, the bonds issued for the Authority's acquisition of the Turing Apartments would be indebtedness solely of the Authority, and payable only from revenues of the Project.

The term for the repayment of the bonds is typically 30 to 35 years. Under the Public Benefit Agreement, the City, at its sole discretion, would be permitted to purchase or force a sale of the Project at any point between year 15 and the end of the bond term⁵. The net proceeds of the sale (after paying off debt), would accrue to the City. The Project would be conveyed on an "as is" basis and the City or future owner would be responsible for making any needed capital improvements as well as paying ad valorem property taxes, which would be reinstated (unless the new owner is a non-profit and eligible for abatement).

The City of Milpitas is in the process of evaluating the merits of participating in the program, and retained KMA to assess:

- the degree to which the proposed rent reductions will enhance the affordability of the project and meet the City's affordable housing objectives;
- the potential financial returns to the City relative to the value of foregone property tax revenues over the 30+ year term;
- economic aspects of transaction structure and potential risks and liabilities to the City; and
- the factors that led three other cities to decline to participate in a similar offer by CSCDA.

To undertake this review, KMA received and reviewed the following:

- Financial pro forma information provided by the proposed Project Administrator, Waterford Residential. The information provides estimates of sources and uses of funds for the purchase of the Project by the Authority, proposed reductions in unit rental rates, anticipated operating projections for a 34-year term and anticipated reversion value to the City of Milpitas upon conveyance. Waterford also provided recent property tax assessments, an appraisal of the property, and a property condition report;
- A Draft Public Benefit Agreement for execution by the CSCDA Community Improvement Authority (Owner) and the City of Milpitas (Host);
- A Draft Project Administration Agreement for execution by the CSCDA Community Improvement Authority (Owner) and Waterford Property Company, LLC (Administrator);

⁵ A term of 34 years is contemplated by the draft Public Benefit Agreement prepared for the Turing transaction.

- Draft Purchase and Sale Agreement for execution between Milpitas -District 1 Owner, LLC (Owner) and Waterford Residential 8, LLC (Buyer);
- Draft Property Management Agreement between CSCDA Improvement Authority (Owner) and Greystar California, Inc. (Manager);
- Information from the City of Milpitas regarding the City's affordable housing goals.
- Market information from CoStar and other public sources on the City of Milpitas and the subject property;
- Santa Clara County Controller data on ad valorem property taxes and property tax assessments that apply to the Project; and
- A sample trust indenture, which Waterford proposes would be similar to the indenture for the Turing transaction.

KMA discussed the proposed program details with representatives of Waterford Residential. KMA also contacted staff from the cities of San Jose, Oakland and Santa Clara to understand their experiences with the CSCDA program and their decisions to not participate in the program.

III. DESCRIPTION OF THE TURING APARTMENTS AND THE PROPOSED TRANSACTION

A. Turing Apartments

Turing Apartments is a Class A mid-rise apartment complex with 371 units located at 1365 McCandless Street in Milpitas, at the southwest corner of the intersection of McCandless Drive and Great Mall Parkway. The Project was built in 2019 and is 7-stories in height. The 780,000 square foot building consists of 496,000 square feet of residential space, 47,000 square feet of ground floor retail space⁶, and a 237,000 square foot parking garage. The project contains a mix of studios, 1-bedroom, 2-bedroom and 3-bedroom units, with an average unit size of 942 square feet. The unit mix is as follows:

Exhibit 3. Turing Apartments – Unit Mix

Unit Type	Units	Avg. SF
Studios	19	563
1 Beds	193	778
2 Beds	150	1,157
3 Beds	9	1,667
Total	371	942

The property offers extensive common-area amenities, including a rooftop pool, tri-level fitness center, outdoor sports bar, courtyards, coffee bar, private cabanas, bike storage room, presentation kitchen, bocce ball court, etc. According to a recent appraisal, the units have good quality interior finishes including quartz countertops, wood-grain finish flooring, central HVAC, dual master suites, in-unit washer/dryer, patio or balcony, and keyless unit entry.

The owner of the Project is Milpitas – District 1 Owner, LLC a Delaware limited liability company that is related to Lyon Living.

B. Proposed Transaction

As proposed, only the residential portion of the Turing Apartments would be the subject of the transaction. The retail portion would be separately owned and continue to be subject to the payment of property taxes. The key aspects of the proposed transaction are as follows:

- The City of Milpitas would agree to join the Authority, which would acquire the Project
- The City would approve the Authority's issuance of bonds for the acquisition of the Turing Apartments and approve the form Public Benefit Agreement. The form Public

⁶ The retail component of the project would remain in separate ownership and is not a part of the subject transaction. The retail component would continue to be subject to all applicable property taxes.

Benefit Agreement defines the terms under which the City can acquire the property. The City may negotiate terms of the Public Benefit Agreement, such as selection criteria for new tenants for vacant units, property management practices, and a requirement that the Authority provide annual reports to the City.

- The Authority and a selected bond company would execute a Trust Indenture pursuant to which the Authority would issue tax exempt bonds for the purchase of the property. The anticipated term of the bond is 34 years.
- The Authority and the Bond Trustee would also execute a Regulatory Agreement and Declaration of Restrictive Covenants which would govern the income and rent restrictions on the property for a term of not less than 30 years or until all debt on the Project is retired. The City has the right to negotiate terms of the Regulatory Agreement.
- The City of Milpitas and the Authority would execute a Public Benefit Agreement that conforms to the form Public Benefit Agreement approved by the City at the time that the City approved the sale of bonds. Under the Public Benefit Agreement, the City would have the right to exercise the option to call for the Project's sale for a term beginning 15 years from the issuance of the bonds through the date on which no Project debt remains outstanding. The minimum sales price would be the amount necessary to retire all Project debt, pay transaction costs, and any amounts due to the Authority. Any excess sales proceeds would be transferred to the City. The City would have full discretion over the use of the excess sales proceeds. While a sale any time after the 15th operating year would be permitted, there is a strong possibility that the sales proceeds in the 16th operating year would not be sufficient to retire all outstanding debt, which would prohibit a sale at that time.
- The Authority and Waterford Property Company, LLC would execute a Project Administration Agreement to provide the terms under which Waterford would serve as the Project's Administrator. The Administrator facilitates the purchase of the property and oversees the operation of the property on behalf of the Authority until the debt is repaid and the Project is sold to the City or another entity.
- The Authority and Greystar, Inc. would execute a Property Management Agreement pursuant to which Greystar would conduct the day-to-day operations of the Project under the Administrator's supervision.
- The bonds would be comprised of a Series A issue that would be used to acquire the property and a subordinate Series B issue, which would be used to provide compensation to the Project Administrator (Waterford Property Company, LLC).
- The proposed bond underwriter for the Turing transaction is Goldman Sachs Group, Inc.

- There would be a simultaneous purchase and sale of the property between Milpitas – District 1 Owner and Waterford and then between Waterford and the Authority
- Once acquired by the Authority, the Project would be exempt from paying all ad valorem property taxes.
- While the Project is owned by the Authority, the City is exempt from any liability or responsibility related to the Project's financings or operation.
- The pro forma prepared by Waterford estimates that the bonds will not be fully retired until the end of the Project's 34th operating year. Therefore, a sale prior to the 34th operating year would require a sales price sufficient to retire the outstanding debt.
- While the City would be permitted to sell the property at its fair market value after the bonds have been retired, this may not be politically desirable if tenants would face eviction or significant rent increase due to the sale.

IV. AFFORDABILITY CONSIDERATIONS

The primary public benefit of the CSCDA Moderate Income program is to increase the supply of deed restricted Moderate Income rental housing. Pursuant to CSCDA's proposal, a regulatory agreement would be recorded against the property that would restrict the occupancy and rents to households earning no more than 120% of the AMI⁷, with 33% of the units restricted to households earning no more than 80% of the AMI, 33% to households earning no more than 100% of the AMI and 33% to households earning no more than 120% of the AMI. Rental rates would not exceed 35% of the income limit for each income tier. Annual tenant rent increases would be limited to no more than the increase in the AMI or 4%, whichever is less. The income and rent restrictions would be in place for the term of the bonds. These are the standard provisions of the CSCDA program. If the City elects to participate in the program, the City would have the opportunity to negotiate deeper affordability levels and other terms of the regulatory agreement.

While all Turing units would be subject to the CSCDA income and rent limits, Waterford is proposing deeper rent decreases for existing income eligible households, which are described in Section IV C.

A. Turing Apartments' Current Rental Rates

As shown in Exhibit 4, the Turing's current effective rents range from \$2,278 per month for studios to \$5,327 per month for three-bedroom units. The average rent across all unit sizes is \$3,155 per month. The unit mix and current average effective rental rates are as follows:

Exhibit 4. Turing Apartments – Unit Mix and Current Rental Rates

Unit Type	Units	% of Units	Avg. SF	Effective Rent	Rent per SF
Studios	19	5%	563	\$2,278	\$4.05
1 Beds	193	52%	778	\$2,923	\$3.76
2 Beds	150	40%	1,157	\$3,427	\$2.96
3 Beds	9	2%	1,667	\$5,327	\$3.20
Total	371	100%	942	\$3,155	\$3.35

According to Waterford, the property's current vacancy rate is 9.4%, compared with 11.2% for the entire stock of multifamily apartments in Milpitas. In 2019, Milpitas' average vacancy rate was 4.6%, which would indicate that Turing's vacancy rate will decline as the regional economy recovers from the pandemic.

⁷ Existing tenants with annual household incomes that exceed the CSCDA program limit of 120% of AMI would be permitted to retain tenancy of their units.



B. Turing's Current Rent Levels Compared with Other Market Rate Units in Milpitas

As shown in Exhibit 5 and detailed in Table 1, the current rental rates at Turing are significantly higher than the average rental rates of market rate apartments in Milpitas, which is attributable to both Turing being one of the newer projects in Milpitas and the relatively larger sizes of Turing's one-, two-, and three-bedroom units. The average rent differential is \$560 per month, which represents a 22% premium over market rate apartments throughout the City of Milpitas.

Exhibit 5. Current Market Rents at Turing Compared to Other Market Rate Units in Milpitas

Unit Type	Current Monthly Average Rental Rate		
	<i>Turing</i>	<i>Market Rate Units in Milpitas</i>	<i>Difference</i>
Studio Units	\$2,278	\$2,155	\$123 (+6%)
One Bedroom Units	\$2,923	\$2,376	\$547 (+23%)
Two Bedroom Units	\$3,427	\$2,887	\$540 (+19%)
Three Bedroom Units	\$5,327	\$3,317	\$2,010 (+61%)
Avg, all Units	\$3,152	\$2,595	\$560 (+22%)

C. Proposed Rent Reductions for Existing Income Eligible Tenants

As proposed, the rents charged to existing income-eligible tenants would be decreased by approximately 10%⁸, as follows:

- The rental rates to households with incomes that do not exceed 80% of the AMI would be reduced by 12%,

⁸ The rental rates on the three-bedroom units would be decreased by 27% for the 80% AMI units, 10% for the 100% AMI units and 8% for the 120% AMI units.

- the rates to households with incomes that do not exceed 100% of the AMI would be reduced by 10%, and
- the rates to households with incomes that do not exceed 120% of the AMI would be reduced by 8%.

As shown in Exhibit 6, rent reductions would average \$323 per unit, per month. With the rent reductions, the rents on existing income-eligible tenants would average \$2,050 for studios, \$2,631 for one-bedroom units, \$3,084 for two-bedroom units, and \$4,520 for three-bedroom units, for an average rent of \$2,832 across all units. Future annual rent increases on these existing tenants would be capped at the lesser of the increase in the AMI or 4%.

It should be noted that these rent reductions would be implemented gradually, as the leases of existing tenants are renewed and would not apply to future new tenants or to existing tenants with incomes that exceed 120% of the AMI. Waterford has indicated that it will evaluate the incomes of existing tenants to determine eligibility for rent reductions after the transaction is complete. Waterford anticipates that it will take approximately 3-years for all tenancies to convert to income-eligible tenants.

The resulting reduced rents for existing income eligible tenants would be less than what is currently charged at Turing, but the reduced rates for all units (excluding studios) would remain above the average market rents in Milpitas. On average, the reduced rental rates would exceed the market average in Milpitas by \$237 per month. The studios would rent for approximately \$105 per month below the market rate average, while the one-bedroom rents would be approximately \$255 per month or 11% above market, two-bedroom rents would be \$197 per month or 7% above market, and three-bedroom rents would be \$1,203 per month or 36% above market.

Exhibit 6. Proposed Restricted Rents for Existing Income-Eligible Tenants

	Studios	One Bedrooms	Two Bedrooms	Three Bedrooms	Average
Proposed Reduced Rents for Existing Income-Eligible Tenants					
80% of AMI	\$2,004	\$2,572	\$3,015	\$3,866	\$2,755
100% of AMI	\$2,050	\$2,631	\$3,084	\$4,794	\$2,839
120% of AMI	\$2,096	\$2,689	\$3,152	\$4,900	\$2,902
Average	\$2,050	\$2,631	\$3,084	\$4,520	\$2,832
Current Turing Rents	\$2,278	\$2,923	\$3,427	\$5,327	\$3,155
<i>Proposed Rent Reduction</i>					
80% of AMI	(\$274)	(\$351)	(\$412)	(\$1,461)	(\$400)
100% of AMI	(\$228)	(\$292)	(\$343)	(\$533)	(\$315)
120% of AMI	(\$182)	(\$234)	(\$275)	(\$426)	(\$253)
Current Avg. Market Rents, Citywide	\$2,155	\$2,376	\$2,887	\$3,317	\$2,595
Difference between Proposed Reduced Rents and Citywide Avg. Mkt Rents	-\$105	+\$255	+197	+\$1,203	+\$237

D. Maximum Rents for Income Eligible Households Permitted by CSCDA

Once acquired by the Authority, all Turing units would be subject to income and rent restrictions pursuant to the standard requirements of the CSCDA program unless the City negotiates specific requirements⁹. The CSCDA methodology uses rent limits published by the California Tax Credit Allocation Committee (TCAC) and allows for 35% of income to be spent on rent, exclusive of utility expenses. As shown in Exhibit 7, the maximum allowable monthly rent under the CSCDA program averages \$4,064 across Turing's unit mix, which is \$909 more than Turing's current average market rental rate of \$3,155 per unit. The CSCDA maximum allowable rent for three-bedroom units at the 80% and 100% AMI levels are the only situations for which Turing's current rent exceed the maximum permitted by CSCDA. The CSCDA rents at even the 80% AMI level are approximate to the Turing's current market rate rents for studios, one and two-bedroom units.

Under the proposed program, the rents on units that turn over would be limited by the CSCDA maximums throughout the regulatory period. Given that the Turing's current market rate rents are less than the CSCDA maximums for all units excluding units with three bedrooms, it is possible that the rents charged to new tenants of studios, one-bedroom units, two-bedroom units and a portion of the three-bedroom units would be the same as Turing's current market rate rents.

⁹ As proposed, the rents on units occupied by existing income eligible tenants would be less than the maximum rents permitted under the standard CSCDA restrictions.

Most affordable housing programs in the state are aligned with the income and rent levels permitted by the State Department of Housing and Community Development (HCD). HCD publishes income limits for use in calculating affordable rents and caps affordable housing costs at 30% of income, which is inclusive of an allowance for utilities. Because of the higher incomes and housing costs permitted by the CSCDA program, the maximum rents permitted by CSCDA are significantly higher than the rents permitted by HCD. Exhibit 5 presents a comparison of affordable rents using the standard HCD assumptions and the CSCDA assumptions. As shown, the CSCDA allowable rents exceed rent levels permitted by HCD by \$824 to \$1,507 per month, with an average difference of \$1,107 per month, which represents a 37% premium.

Exhibit 7. Maximum Rents Under CSCDA Limits Compared to Maximum Rents under HCD Regulations

	Studios	One Bedrooms	Two Bedrooms	Three Bedrooms	Average
<i>Maximum CSCDA Rents</i>					
80% of AMI	\$2,707	\$3,094	\$3,481	\$3,866	\$3,251
100% of AMI	\$3,383	\$3,868	\$4,352	\$4,833	\$4,064
120% of AMI	\$4,060	\$4,641	\$5,222	\$5,800	\$4,876
Average	\$3,383	\$3,868	\$4,352	\$4,833	\$4,064
<i>Maximum HCD Rents</i>					
80% of AMI	\$1,883	\$2,169	\$2,434	\$2,698	\$2,275
100% of AMI	\$2,470	\$2,840	\$3,188	\$3,537	\$2,980
120% of AMI	\$3,000	\$3,445	\$3,869	\$4,293	\$3,616
Average	\$2,451	\$2,818	\$3,163	\$3,509	\$2,957
<i>Difference</i>					
80% of AMI	\$824	\$925	\$1,047	\$1,168	\$976
100% of AMI	\$913	\$1,028	\$1,164	\$1,296	\$1,084
120% of AMI	\$1,060	\$1,196	\$1,353	\$1,507	\$1,261
Average	+\$932	+\$1,050	+\$1,188	+\$1,324	\$1,107

Sources: KMA calculations using HCD income limits, Santa Clara County utility allowances, and TCAC income limits

CSCDA permitted rents at the 80% of AMI rent level exceed the HCD permitted rents at the 100% of AMI level. In addition, the CSCDA 100% of AMI rent limits exceed the HCD 120% of AMI rent limits for all unit types excluding three bedrooms.

E. Current and Proposed Rents Relative to HCD Affordability Levels

As presented in Table 2, Turing's current average rental rates for studios, one-bedroom and two-bedroom units are affordable to households earning 93%, 103% and 107% of the Area Median Income (AMI)¹⁰, respectively. These affordability levels are within the Moderate-Income range of 80% to 120% of the AMI. The average rental rate for the three-bedroom units is affordable to households earning 147% of the AMI, which exceeds the limit for Moderate Income. With the

¹⁰ Rents have been measured relative to standard HCD regulations.

proposed rent reductions, the affordability levels for those units that are currently occupied by income eligible households will deepen to approximately 84% of AMI for studio units, 93% for one-bedroom units, 97% of AMI for two-bedroom units and 123% for three-bedroom units. A full breakdown of the affordability of current units at Turing is shown in Table 3.

While the proposed rents for existing income eligible tenants will be reduced, under standard practices, CSCDA would be permitted to charge new tenants up to the maximum rent levels permitted by CSCDA, which exceed the current market rate rent levels charged at Turing for all unit types, except three-bedroom units. The maximum rents permitted by CSCDA also exceed the average market rate rent for all apartments in Milpitas. So, with turnover, the Project's rents could trend toward current, unrestricted rent levels. Because of these considerations, the affordable housing benefits of the Project could be very limited. The units will have deed restrictions, but the rental rates on many units could approximate or exceed average market rate rents in Milpitas.

F. Rents and AMI have grown unevenly over the past two decades.

As shown in the following graphs and data chart, the annual growth rates of market rate rents and the AMI have differed significantly over the past twenty years. Rents dropped significantly from 2001 to 2005, then grew until 2008 before dropping again in 2009. This was followed by a period of fairly steady growth until 2020. In comparison, the AMI grew sharply between 2001 and 2003, then was flat with slight declines from 2003 through 2016, and then increased at a relatively rapid rate from 2016 through 2021.

For the 10-year period of 2009 through 2019, the AMI has increased at an average annual rate of 2.2%, while apartment rents in Milpitas have increased at higher average annual rate of 2.8%. The averages over the 20-year term of 2001 through 2021 are heavily impacted by both the dotcom bust in the early 2000s and the pandemic and not considered to be less indicative of the future than the experience over the 2009 -2019 period.

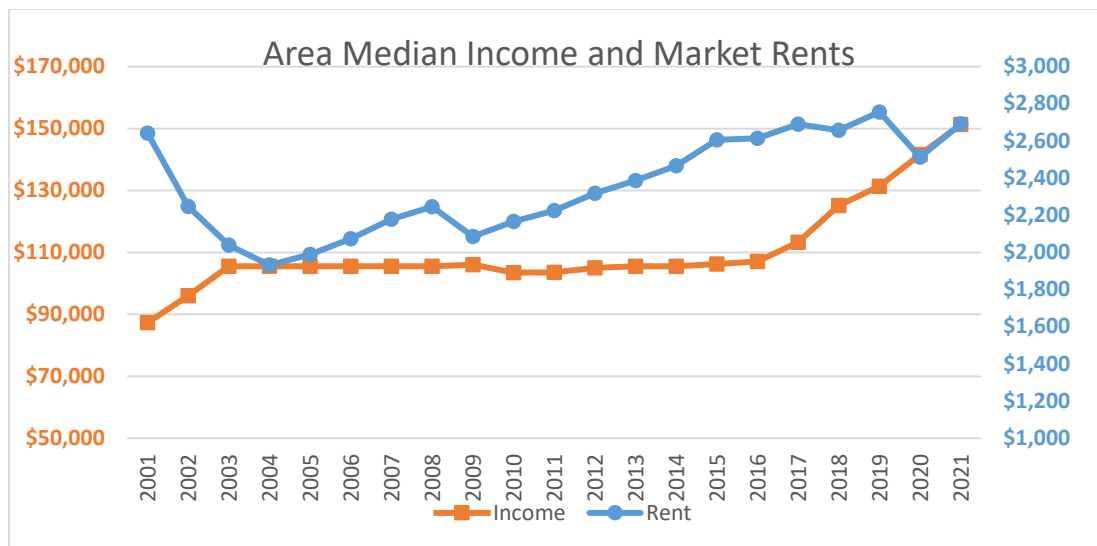


Exhibit 8. Growth in Area Median Income Compared to Market Rents in Milpitas, 2001- 2021

Year	Area Median Income		Milpitas Market Rate Apts.	
	4-person Household	% Change	Market Rate Apartment Rents	% Change
2001	\$87,300		\$2,642	
2002	\$96,000	10%	\$2,247	-15%
2003	\$105,500	10%	\$2,040	-9%
2004	\$105,500	0%	\$1,932	-5%
2005	\$105,500	0%	\$1,989	3%
2006	\$105,500	0%	\$2,073	4%
2007	\$105,500	0%	\$2,179	5%
2008	\$105,500	0%	\$2,246	3%
2009	\$106,100	1%	\$2,085	-7%
2010	\$103,500	-2%	\$2,167	4%
2011	\$103,600	0%	\$2,225	3%
2012	\$105,000	1%	\$2,319	4%
2013	\$105,500	0%	\$2,387	3%
2014	\$105,500	0%	\$2,466	3%
2015	\$106,300	1%	\$2,605	6%
2016	\$107,100	1%	\$2,615	0%
2017	\$113,300	6%	\$2,690	3%
2018	\$125,200	11%	\$2,658	-1%
2019	\$131,400	5%	\$2,756	4%
2020	\$141,600	8%	\$2,513	-9%
2021	\$151,300	7%	\$2,692	7%
Average Annual Change, 2001-2021:		2.9%		0.3%
Average Annual Change, 2009-2019:		2.2%		2.8%

G. Future Rent Increases

The Project's cash flow projection prepared by Waterford assumes a 3% annual increase in overall average rents at Turing, which is consistent with the historic growth in market rate rents over the past decade, but significantly exceeds the average growth rate of the AMI. Per discussions with Waterford, this growth is generated both by annual increases in rents charged to current tenants (restricted to the lesser of annual AMI growth or 4%) and by the turnover of tenants, when rents are reset at the lesser of the maximums permitted under the CSCDA regulations or market rates. Given that the reduced rents are higher than market area rents (except for studios), it is possible that the project could experience significant turnover and the Project's rents will grow at an average of 3%. However, based on past experiences, it is likely that there will be years in which the AMI is flat, or only increases at 1%. During those years, rent increases on existing tenants will be limited to the increase in AMI. In those years, it is likely that the Project will not achieve a 3% growth rate. Given these considerations, KMA has prepared an income and cash flow projection of the Project assuming a 2% annual increase in rents, which KMA believes is a more realistic assumption given the historic pattern of increases in the AMI. The implications of this less aggressive projection on the Project's cash flow and financial returns to the City are presented in Section V of this report.

H. CSCDA Rents and Covenants Relative to RHNA Requirements

Based on the DRAFT 2023-2031 RHNA, the City's production goals are as follows:

- | | |
|-------------------------|-------------|
| ▪ Very Low Income | 1,685 units |
| ▪ Low Income | 970 units |
| ▪ Moderate Income | 1,131 units |
| ▪ Above Moderate Income | 2,927 units |
| ▪ Total New Housing | 6,713 units |

Unfortunately, the CSCDA program is not aligned with addressing RHNA needs for the following reasons:

- RHNA requires deed restrictions to be in place for 55 years and the CSCDA program is designed for restrictions that are in place for approximately 30 years.
- The CSCDA income limits are higher than the RHNA income limits.
- For Moderate Income units to count towards RHNA, the units must be new construction, which is not the case with the Turing Project;

I. City's Role in Affordability Covenants and Compliance

Under standard CSCDA terms, the City does not have any role in ensuring that affordability covenants are properly implemented. Ensuring compliance is a service provided by the Service

Administrator. The Regulatory Agreement and the Public Benefit Agreement should contain provisions that require the Administrator to provide detailed annual reports to the City that demonstrate that the affordability covenants are being properly implemented. The Administrator should also certify that the covenants are being implemented per the requirements of the Regulatory Agreement.

V. POTENTIAL FINANCIAL RETURNS TO THE CITY OF MILPITAS

The direct financial impacts to the City from the proposed transaction consist of: 1) foregone ad valorem property tax revenues from the Project during the regulatory term; 2) foregone property tax in lieu of vehicle license fee revenues (PTILVLF) from the state; and 3) potential receipts from the future sale of the Project after the regulatory period terminates and the property is conveyed to the City¹¹. It should be noted that the City would have the right to request for the Project to be sold any time after the 15th year following the issuance of the acquisition bonds. If the City were to elect to request a sale before the end of the scheduled term, a minimum sales price would need to be effectuated that would be sufficient to fully defease outstanding bonds and any other outstanding debt, pay transaction costs, and pay any amounts due to CSCDA.

There are no financial expenditures, liabilities, or obligations to the City that would be created by joining the Authority¹². The Authority is a public entity separate and apart from its members, and any debt or obligations incurred by the Authority will not constitute debts or obligations of any of its member agencies, including the City of Milpitas. Bonds issued for the Authority's acquisition of the Turing Apartments would be indebtedness solely of the Authority and payable only from revenues of the Project.

A. Foregone Property Taxes

As shown in Exhibit 9, the base 1% tax levy on the Project is estimated to total approximately \$1.88 million in FY 2021/22. Additional ad valorem taxes approved by voters total \$333,000, for a total estimated annual payment of \$2.2 million of ad valorem property taxes to affected taxing agencies. The Turing Project also generates approximately \$75,000 property tax revenue in lieu of vehicle license fee (PTILVLF) revenue to the City of Milpitas¹³. If the Project is purchased by the Authority, the Project would be exempt from paying ad valorem property taxes, which would significantly reduce the Project's annual expenses. The City of Milpitas collects approximately 16.24% of the base 1% tax levy net of ERAF or approximately \$305,460 per year. Including the loss of PTILVLF revenue, the revenue loss to the City of Milpitas resulting from the property's new tax-exempt status would approximate \$381,000 per year.

It should be noted that the City of Milpitas as the "host" City, is the only taxing agency that must agree to join the Authority, approve of the issuance of bonds for the subject transaction, and has rights to receive any excess sales proceeds from the sale of the Project at the end of the

¹¹ In addition to these impacts the City will also forego the reimbursement of excess ERAF that is attributable to the Project. The Excess ERAF impacts may diminish or not be applicable over time. These impacts have not been measured or included in this analysis.

¹² There will be additional costs to the City associated with staff time to monitor the Project. These costs have not been estimated and have not been included in this analysis.

¹³ Milpitas receives approximately \$0.4 per \$1,000 of assessed value growth over the City's assessed value in FY 2004/5.

regulatory period. The other taxing agencies do not have the legal authority to deny the ability of the Authority to purchase the Project or to require reimbursement for foregone property tax revenues upon the sale of the Project at the end of the regulatory period.

Exhibit 9. Estimated Foregone Property Tax Revenues to Taxing Agencies, FY 2021-22

Assessed Value		
Land & Improvements		\$186,491,455
Personal Property		<u>\$1,599,901</u>
Project Assessed Value		\$188,091,356
General Levy (1% of Assessed Value)		
City of Milpitas	16.24%	\$305,460
Milpitas Unified	40.08%	\$753,870
San Jose Evergreen Community College	6.50%	\$122,259
County School Service	3.16%	\$59,437
ERAF	14.78%	\$277,999
Santa Clara County	14.03%	\$263,892
Bay Area Air Quality Management District	0.18%	\$3,386
Santa Clara County Importation Water - Misc District	0.49%	\$9,216
Santa Clara County Library	2.56%	\$48,151
Santa Clara Valley Water District	0.16%	\$3,009
Santa Clara County Water District Zone 1	1.69%	\$31,787
Santa Clara County Water District Zone 4	0.13%	\$2,445
Total General Levy	100.00%	\$1,880,914
Voted Indebtedness		
County Retirement Levy	0.0388%	\$72,979
County Library Retirement	0.0024%	\$4,514
Elementary or Unified School Bonds	0.0898%	\$168,906
Community College Bonds	0.0357%	\$67,149
<u>County Bond 2008 Hosp Fac</u>	<u>0.0069%</u>	<u>\$12,978</u>
Subtotal	0.1736%	\$326,527
SCVWD-State Water Project (Land & Imp Only)	0.0037%	\$6,900
Total Voted Indebtedness		\$333,427
Property Tax In-lieu of Motor Vehicle License Fees (PTILVLF)		\$75,237
Total Foregone Property Taxes to Taxing Agencies, FY2021-22		\$2,289,577

Note: The property is located within a former RDA and net distributions to each specific taxing agency may be less than shown due to distributions to the Successor Agency to pay existing obligations. As the Successor Agency's obligations decline, the distributions to the Successor Agency will decline and the distributions to the taxing agencies will move toward the distributions shown in this chart.

Source: Turing FY2020-21 Secured Property Tax Bill, Santa Clara County Assessor data

The Project Administrator has estimated that the acquisition bonds will be retired 34 years following issuance. For purposes of this analysis, it has been assumed that the City would

purchase and then sell the property at the end of year 30. As shown in Exhibit 10, it is estimated that the cumulative total of foregone property tax revenues to the City of Milpitas over the 30-year term would approximate \$9.7 million in 2021 dollars. The cumulative total of foregone property tax revenue for all taxing agencies is projected at \$58.1 million over the 30-year term, in 2021 dollars.

Exhibit 10. Projected Abated Property Taxes and Foregone Milpitas PTILVLF Revenue During Regulatory Period

	Year 1	Year 15	Year 30
All Taxing Entities			
Annual (Increases @ 2% per yr)	\$2,289,577	\$3,021,048	\$4,065,933
Cumulative (Discounted @ 3%)		\$31,170,000	\$58,096,000
City of Milpitas			
Annual (Increases @ 2% per yr)	\$380,697	\$502,321	\$676,059
Cumulative (Discounted @ 3%)		\$5,183,000	\$9,660,000

Source: Turing FY2020-21 Secured Property Tax Bill, Santa Clara County Assessor data.

B. Potential Sales Proceeds available to the City at the End of 30-Year Term

The net sales proceeds that could potentially be available to the City upon a sale at the end of a 30-year term has been estimated based on the cash flow projections prepared by Waterford as well as a less aggressive projection prepared by KMA. The less aggressive scenario assumes that rental rates increase at 2% per year compared with Waterford's assumption that they increase at 3% per year and that an additional \$28.2 million is spent on capital improvements to ready the property for sale. This investment approximates \$10 million in 2021 dollars. For both projections, KMA assumed that the property would be sold at fair market value without any affordable housing restrictions in year 30. The key findings of the Waterford Projection are presented in Exhibit 11 and the key findings of the 2% rent growth projection are presented in Exhibit 12.

1. Potential Proceeds Based on Cash Flow Projection Prepared by Waterford

As shown in Exhibit 11A, it is estimated that the property could potentially support a sales price of approximately \$401 million, assuming a market capitalization rate of 5% and that capital improvements would not be needed to ready the property for sale.

It is projected that approximately \$85.8 million of bond debt will remain outstanding at the end of the 30th year, which would need to be paid out of escrow. It is also estimated that the Senior Debt Service Reserve balance of \$9.5 million would be available for distribution to the City. The net proceeds after the repayment of outstanding debt would total \$325 million.

Under the CSCDA program, reimbursing any of the other taxing agencies for foregone property tax revenues during the regulatory period is at the discretion of the City. Foregone property taxes for all taxing agencies are estimated to total \$92.9 million. If the City were to reimburse all taxing entities, the net remaining proceeds to the city would total approximately \$232 million, or \$95 million in 2021 dollars. If the City were to elect to not provide any reimbursement to other taxing agencies, the net return to the City would total \$127.4 million in 2021 dollars. Under these projections the City's investment of \$15.4 million of property tax revenues could yield a net return of \$127 million if none of the other taxing agencies are reimbursed for foregone property taxes or up to \$95 million if all taxing agencies are reimbursed. In either case, the sale of the Project would yield a significant return to the City.

Exhibit 11. Projected Net Financial Return to Milpitas - Waterford Projection - 3% Annual Rent Growth

Assumed Year of Sale	Year 15	Year 30
I. Sales Proceeds		
Exit Net Operating Income (100% Market Rate) ¹	\$15,855,000	\$24,776,000
<u>Additional Property Tax Payment</u> ²	<u>-\$3,022,000</u>	<u>-\$4,722,000</u>
Adjusted Exit NOI	\$12,833,000	\$20,054,000
Cap Rate	5%	5%
Projected Gross Sales Proceeds	\$256,660,000	\$401,080,000
Senior Debt Service Reserve - Returned to City	\$9,464,655	\$9,464,655
Series A Bonds remaining at End of Term	(\$227,335,073)	(\$80,761,991)
<u>Series B Bonds remaining at End of Term</u>	<u>(\$5,117,350)</u>	<u>(\$5,117,350)</u>
Net Proceeds After Debt Retired	\$33,672,232	\$324,665,314
II. Potential Reimbursement of Foregone Property Tax Revenues		
Reimbursement of Property Tax Foregone by City of Milpitas	\$5,282,453	\$12,391,940
Reimbursement of Property Tax In Lieu of VLF (PTILVLF)	\$1,301,097	\$3,052,202
Reimbursement of Property Tax to All Other Taxing Entities (at discretion of City of Milpitas)	\$33,011,057	\$77,439,594
III. Net Return to The City of Milpitas		
Net Return to City If Only Milpitas Prop Tax and PTILVLF is Reimbursed	\$27,088,682	\$309,221,172
Net Return to City if City and All Other Taxing Entities are Reimbursed	(\$5,922,375)	\$231,781,578
City of Milpitas Equity Multiple (if only City is reimbursed)	5.11x	21.02x
Net Return to City If Only Milpitas Prop Tax and PTILVLF is Reimbursed	\$17,387,194	\$127,395,029
Net Return to City if City and All Other Taxing Entities are Reimbursed	(\$3,801,347)	\$95,490,941

1. Project is sold without affordability restrictions. KMA estimated Net Operating Income using Waterford Residential's market rent growth, income and expense assumptions.
2. Property taxes estimated by KMA based on projected sales price.

2. Potential Financial Returns to Milpitas Based on Modified Cash Flow Projection, Reflecting 2% Annual Rent Increases and \$28 million capital investment at end of 30-year Term

The amount of net proceeds is a function of the economic performance of the Project over the 30-year term and is subject to considerable uncertainty and risk. For example, after 30 years, it is possible that a major capital investment would be needed that exceeds the amount of accumulated reserves. Rehabilitation costs would reduce the amount of available net proceeds, which could have a detrimental impact on potential receipts to the City. The Public Benefit Agreement, which details the City's right to sales proceeds is subordinate to the interest in the Project that is securing the bonds or other Project debt. Therefore, the financial returns to the City are at risk if the Project's cash flow is not sufficient to meet the requirements of Project debt.

The Authority is also permitted to refinance the property without any approval of the City, which could create a situation in which the property carries debt beyond what is contained in the cash flow projections. An additional key assumption is that rents increase at an average annual rate of 3% over the entire 30-year term. Given that the rent increases on existing tenants is limited to the lesser of the increase in the AMI or 4%, that the AMI is often flat, and that market rate rents increased at an average rate of 2.8 percent over the past 10 years, and that capital costs are understated, it is likely that the projected rent escalations are overly optimistic and that the Project's net operating income would be less than projected, which would lead to a lower sales price upon the end of the regulatory term.

Given these risks, KMA has prepared a modified cash flow projection that reflects a 2% annual increase in rents (rather than 3% in the Waterford model) and that \$28 million (\$10 million in 2021 dollars) of proceeds is used to fund capital improvements. The findings of this modified, less aggressive projection are presented in Exhibit 12.

As shown, under this scenario gross proceeds are estimated to total \$102.4 million at the end of year 30, which would yield a net return of \$58.8 million (\$24.2 million in 2021 dollars) to the City if only the City is reimbursed for foregone revenues and the capital investment of \$28.2 million is funded from proceeds. This return is much lower than the Projected return of \$127 million yielded by the Waterford projection. It is also important to note that under this more conservative projection, it is projected that sales proceeds would not be sufficient to reimburse all of the taxing agencies and fund the \$28.2 million of capital improvements. The projection also indicates that a sale at the end of year 15 would not be feasible because sales proceeds would not be sufficient to retire the outstanding bond debt.

Exhibit 12. Projected Net Financial Return to Milpitas - KMA Modified Projection - 2% Annual Rent Growth + Assumed \$10 million (2021 dollars) additional capital improvement at sale

Assumed Year of Sale	Year 15	Year 30
I. Sales Proceeds		
Exit Net Operating Income (100% Market Rate) ¹	\$13,511,000	\$17,594,000
<u>Additional Property Tax Payment²</u>	<u>-\$2,575,000</u>	<u>-\$3,350,000</u>
Adjusted Exit NOI	\$10,936,000	\$14,244,000
Cap Rate	5%	5%
Projected Gross Sales Proceeds	\$218,720,000	\$284,880,000
Senior Debt Service Reserve - Returned to City	\$9,464,655	\$9,464,655
Series A Bonds remaining at End of Term	(\$242,614,425)	(\$186,049,950)
<u>Series B Bonds remaining at End of Term</u>	<u>(\$5,884,137)</u>	<u>(\$5,884,137)</u>
Net Proceeds After Debt Retired	(\$20,313,908)	\$102,410,567
II. Potential Reimbursement of Foregone Property Tax Revenues		
Reimbursement of Property Tax Foregone by City of Milpitas	\$5,282,453	\$12,391,940
Reimbursement of Property Tax In Lieu of VLF (PTILVLF)	\$1,301,097	\$3,052,202
Reimbursement of Property Tax to All Other Taxing Entities (at discretion of City of Milpitas)	\$33,011,057	\$77,439,594
Assumed Funding of \$28.2 million of additional capital improvements. (\$10 million in 2021 dollars)	\$0	\$28,200,000
III. Net Return to the City of Milpitas		
Net Return to City If Only Milpitas Prop Tax and PTILVLF is Reimbursed and capital improvement is funded	(\$6,583,550)	\$58,766,425
Net Return to City if City and All Other Taxing Entities are Reimbursed and capital improvement is funded	(\$6,583,550)	\$0
City of Milpitas Equity Multiple (if only City is reimbursed)	-1.00x	2.35x
IV. Net Return to City in 2021 Dollars (discounted at 3%)		
Net Sales Proceeds to City If Only Milpitas Prop Tax and PTILVLF is Reimbursed and capital improvement is funded	(\$4,225,730)	\$24,210,989
Net Sales Proceeds to City if City and All Other Taxing Entities are Reimbursed	(\$4,225,730)	\$0

1. Project is sold without affordability restrictions. KMA estimated Net Operating Income using Waterford's assumptions for operating expenses. Income reflects assumed 2% annual increase in rents.

2. Property taxes estimated by KMA based on projected sales price.

Another key consideration is that given the City's need for affordable housing, a likely scenario is that the City would elect to sell the Project to a non-profit to continue as an affordable housing project. It is very possible that capital improvements would be needed to keep the project in good condition. Under these scenarios, the Project would not generate any revenues to the City and the taxing entities would not be reimbursed for the foregone property tax revenues that were abated over the 30-year term.

C. Comparison of Foregone Property Tax Revenue to Rent Savings Created by CSCDA program

Exhibit 13 and Tables 4A and 4B present a comparison of the magnitude of foregone property tax revenues to the cumulative value of the rent savings achieved at Turing. In summary, the taxing agencies would forego approximately \$92.9 million in property tax revenue over the 30-year term. The City's portion of foregone tax revenue totals \$15.4 million in exchange for the investment. As shown in Table 4A, based on the Waterford cash flow projection, Turing tenants would save approximately \$74.9 million in rent relative to the projected rents had the Turing continued to operate as a market-rate project. The value of the foregone property tax revenues exceeds the value of the rent abatement because a portion of that value is captured by the agents of the transaction, including the owner of Turing before it was sold to CSCDA, who would receive an above-market sales price, the Administrator, who would receive fees for facilitating the transaction, and CSCDA.

Under the more conservation projection, which reflects a 2% annual increase in rents, it is estimated that the tenants would save approximately \$159.5 million in rent relative to the projected rents had the Turing continued to operate as a market rate project. Under these assumptions, the rent savings significantly exceed the amount of foregone property taxes.

Exhibit 13. Rents Savings Created by CSCDA Program Compared to Foregone Property Tax
Cumulative, Year 1 through Year 30

<i>Rental Income, Assuming 100% market rate project</i>	<i>Rental Income with CSCDA Restrictions</i>	<i>Rent Savings Due to CSCDA Program</i>	<i>Foregone Property Tax Payments</i>	<i>Amount by Which Foregone PPTX exceeds Rent Savings</i>
Based on Waterford Cash Flow Projection				
\$667.6 million	\$592.7 million	\$74.9 million	\$92.9 million	\$18.0million
Based on Modified Cash Flow Projection with 2% Annual Rent Increases				
\$667.6 million	\$508.1 million	\$159.5 million	\$92.9 million	-\$66.6 million

VI. ECONOMICS OF TRANSACTION STRUCTURE AND CITY RISKS

The anticipated sources and uses of funds for the acquisition of the Project are shown in Exhibit 14. As shown the acquisition would be fully financed by a tax-exempt bond issued by the Authority as well as a subordinate Series B bond providing a preferred return to Waterford, the Project Administrator. The Series A Bond would be sold to institutional investors with a \$249.1 million principal and a \$17.1 million issuance premium. A Series B Bond of \$5 million would also be issued, which would provide a potential future payment of \$5 million to the Administrator.

Exhibit 14. Anticipated Sources and Uses of Funds

Sources of Funds	Total	%
Series A	\$249,069,856	92%
Series A Issuance Premium	\$17,104,762	6%
Series B	\$5,000,000	2%
Total Sources	\$271,174,618	100%
Uses of Funds		%
Project Acquisition Account	\$237,350,000	88%
Capital Expense Fund	\$3,063,173	1%
Operating Reserve	\$784,255	0.3%
Coverage Reserve	\$1,892,931	1%
Senior Debt Service Reserve	\$9,464,655	3%
Capitalized Admin. Fees	\$2,500,000	1%
Initial Pmt. Project Admin	\$3,000,000	1%
Project Admin. Preferred Return	\$5,000,000	2%
Extraordinary Expense	\$500,000	0.2%
Operating Account	\$448,326	0.2%
Costs of Issuance	\$7,421,278	3%
Total Use of Funds	\$271,174,617	100%

As proposed, CSCDA would purchase the Turing for a purchase price of \$235,250,000. A recent appraisal of the property established the Project's value at \$224 million as a market rate project and a value of \$279 million under the assumption that property taxes are abated and the Project participates in the CSCDA program. The appraisal demonstrates that the CSCDA program enhances the value of the property.

Based on the projections prepared by Waterford, the Project's successful operating performance is closely tied to:

- Achieving 3% annual rental increases through AMI adjustments and turnover. The rent increases are needed to support increases in operating expenses, to have sufficient cash flow to start paying down the outstanding bond principal and to maintain a 1.0 cash debt service coverage ratio. These are both aggressive assumptions.

- Investment earnings on the senior debt service reserve fund of 1.9% per year, which enables the project to start paying down the outstanding bond principal;
- Short term investment earnings of 1.05%
- Reducing the property's vacancy to 5% by the 3rd year;
- Interest only bonds with principal paid from available cash flow and released reserve funds; and
- Use of the coverage reserve fund to meet annual 1.2 debt coverage requirements. On a cash basis, the annual debt service coverage is 1.0.

In their entirety, these operating projections appear to be aggressively optimistic. Small deviations in actual performance relative to the projections could result in the Project needing to draw down on the reserve funds to pay operating costs and interest costs, which could jeopardize the Project's ability to release the debt service reserves for use to pay down the principal owed on the bonds. Tables 5A and 6A present Waterford's cash flow and debt service projections.

Given the aggressive assumptions of the Waterford cash flow projection, KMA modified the projection to reflect a 2% annual growth rate of rents rather than the 3% annual increase reflected in the Waterford projection. As shown in Exhibit 12, under the modified projection, the net return to the City is significantly less than under the Waterford projection. The projection also indicates that a sale in year 15 is not feasible.

A. Repayment of Project Debt is secured solely by the Project and not the City

One of the key benefits of the revenue bond structure is that the repayment of the debt is secured solely by the revenue generated by the Project. The City of Milpitas would not bear any direct risk relative to curing a default of the bond. However, if there were to be a default, the City would not be able to recover any portion of foregone property tax revenues.

B. Payments to the Project Administrator and CSCDA

Up-front fees to the Administrator to be funded from bond proceeds total \$4.25 million. Upon the sale of the Project, the Administrator would earn an additional return of \$5 million. This is an incentive for ensuring the Project's success. In addition to receiving a distribution of bond proceeds, the Administrator and CSCDA would each receive \$250,000 annually from the Project's cash flow. The Administrator's share would increase at a rate of 3% per year while CSCDA's share would not escalate.

Total scheduled compensation to Waterford over the projected 35-year term approximates \$12.8 million in 2021 dollars.

Bond proceeds to CSCDA total \$1,250,000. Including the annual payment of \$250,000 from cash flow, scheduled compensation to CSCDA over the projected 35-year term totals \$5.05 million in 2021 dollars.

C. Property Management Fee

Greystar's management fee be 1.75% of gross effective income, with a minimum payment of \$18,000 per month. This fee is significantly less than the current management expenses incurred by the Project and other apartment complexes in the market area. Greystar is the largest "institutional" multifamily property management company in the country and is able to get much better efficiencies through its scale than the current owner. Greystar manages Waterford's entire "middle income" portfolio, which is now over 2,000 units and over \$1.1 billion in bond issuances.

D. Funds for Capital Improvements

Funding for capital improvements is limited to the \$3.1 million funded with bond proceeds and annual contributions of \$300 per unit for first 9 years (escalated) and increasing to \$700 per unit (without escalation) in year 10. In 2021 dollars, the Project has sufficient funds for a total of \$7.6 million of capital improvements over 35 years, which is inconsistent with the findings of the Property Condition Report, which estimates a need for \$3.1 million of improvements over the first 12 years. Extrapolating the report's estimates for the first 12 years to 35 years would indicate a need for \$9 million of capital replacement funds. An estimated need of \$9 million is likely to be inadequate because the Property Condition Report did not include any need for many capital improvements that would be needed as the Project ages, including landscaping improvements, paving improvements, roof repairs, replacing doors and windows, and improvements to kitchens and bathrooms. We recommend that the Property Condition Report be revised to account for the Project's needs over 35 years, including a healthy contingency factor, and that sufficient funds be deposited to cover the projected needs over the 35-year term.

VII. SUMMARY OF INTERVIEWS WITH STAFF FROM CITIES THAT ELECTED TO NOT PARTICIPATE IN THE PROGRAM

At the direction of the City of Milpitas, KMA interviewed staff at cities that have decided not to participate in CSCDA program. The purpose of the interviews was to identify the reasons behind the cities' decisions in order to understand better the potential concerns with the program. KMA spoke with staff at the cities of Santa Clara, San Jose, and Oakland. Oakland city staff requested that their interview remain confidential. The findings from the Santa Clara and San Jose interviews are summarized below.

The City of Santa Clara staff indicated that while they see potential with the Middle Income Housing program model, they feel there would be more benefit if the program could be used for new construction projects rather than acquisition projects. Their concerns with the current program include the following:

- The significant amount of foregone property tax revenues for at least 30 years without receiving substantial affordability benefits in return.
- The City would prefer to target households earning 80% of AMI, as there is a lack of demand for rental units affordable to the 100% – 120% AMI range.
- The reduction in rents in the building relies on natural turnover and therefore, there is no guarantee regarding when the building will be fully affordable.
- The structure of the regulatory agreement is such that the units do not qualify for RHNA credit, which is the main concern of the City Council and community members.

The City of San Jose staff prepared a detailed staff report discussing their position regarding the MIH program. They also referred City Council to a memo prepared by HR&A for the City of Long Beach, which identified several potential issues of concern. City Council directed staff to review the MIH proposals and prepare a term sheet that would mitigate the issues of concern. Staff was able to mitigate some of the issues but not all. Some issues that could not be mitigated were:

- The Structure of the Joint Powers Authority (JPA): San Jose would have joined the JPA as an alternate member and not a voting member. Legal counsel was worried about what recourse the City would have as a non-voting member. Since the JPA was already set up, it was unlikely that the structure could be modified.
- Enforceability of Affordability Restrictions: The program gave the City no way to enforce the affordability restrictions.

The following issues could be at least partially mitigated, although there was hesitancy from the investors on some of them:

- San Jose Staff was concerned with the amount of debt that the property would carry.

- The Debt Service Coverage Ratio was close to 1.0, which is a level that the City's Finance Department would not underwrite to on other deals.
- The City has interest in the property being well maintained and having sufficient cash flow to fund ongoing maintenance and capital expenses, because they need the property to have sufficient value at the end of the 30-year term.
- The MIH program asserts that the local jurisdiction takes ownership of the building after 30 years. However, in the City's analysis, this might not be the case. The City only takes ownership of the building after all the debt is repaid. When City staff analyzed some of the proposed deals, there was still outstanding debt at the end of 30 years.
- The Finance Department was concerned about sufficient reserves to cover repairs over 30 years. Some of the pro forma/cash flow examples showed the reserve accounts still fully funded at the end of 30 years, with no withdrawals made for capital expenses.
- The 100% and 120% AMI affordable rent levels were close to market rate rents, so there was no significant affordability benefit. The only immediate affordability benefit came at the 80% AMI level.
 - Staff acknowledges that the program provides annual "rent control," but notes that it takes time to get the full affordability benefit because it depends on natural turnover with no displacement of current tenants.
 - The property is receiving the full property tax exemption regardless of the income levels of the tenants.
- San Jose Staff felt that the levels of fees were too high, especially for the project administrator. In addition, they were concerned that the investor was not contributing any equity to the project.
- There was concern that the MIH investors are paying above market prices for the buildings, which would artificially inflate the real estate market.

In addition to these issues, San Jose Staff also had the following concerns:

- While there is no direct financial risk to the City, there is reputational risk. Staff was concerned by the uncertainty of what could occur at the end of the 30-year term.
- The Finance Department was concerned that the State Treasurer might have issues with the MIH program, leaving the City at risk. Similarly, they were concerned that the IRS could determine that the properties do not qualify for a property tax exemption.

City Council directed staff to explore creating a similar structure on a regional level with the Association of Bay Area Governments or the Bay Area Housing Finance Authority. Ideally, the regional program would be structured with a similar premise, but would mitigate the risks outlined above.

VIII. PRELIMINARY FINDINGS AND RECOMMENDATIONS

A. Affordability Considerations

1. The proposed rent reductions would decrease the rental rates paid by existing income eligible households by approximately 10%, or \$323 per month. These rent reductions would only apply to existing tenants and only as leases renew.
2. The Turing commands premium rents relative to other market rate projects in Milpitas. As a result, even with an average 10% reduction in rental rates, the proposed reduced rental rates would exceed average market rental rates in Milpitas.
3. The proposed rental rates for studios, one-bedroom units, and two-bedroom units meet both CSCDA and HCD limits for Moderate Income housing.
4. The proposed rental rates for a portion of the three-bedroom units exceed HCD limits for Moderate Income housing, but they would meet CSCDA's limits for Moderate Income housing.
5. The rental rates to be charged on new tenants as spaces turn over would be subject to the CSCDA maximum rents, which exceed market area rents and, in most cases, exceed the current market rate rents currently charged by Turing. It is likely that the rents on new leases would be significantly higher than the market rate rents in Milpitas.
6. The projected performance and ability to service debt relies on rents increasing at an average rate of 3% per year. This rate of increase exceeds the average rate of growth of the AMI over the past 10 years or 20 years. The project's financial needs will likely result in the need to maximize rent increase on new tenants and rents could be equal to Turing's current market rate rents for all units, except three-bedroom units.
7. The rent restrictions will not provide the City with any credit towards meeting its Regional Housing Needs Allocation, which is of critical importance to the City of Milpitas

B. Financial Feasibility Considerations

1. Over a 30-year period, it is estimated that the City would forego a total of \$15.4 million (\$9.7 million in 2021 dollars) of ad valorem property tax revenue and property taxes in lieu of vehicle license fee revenue.
2. The projected performance of the Project is dependent on numerous factors. Small deviations from projected rent increases, interest income, and operating expenses could have significant impacts on the Project's ability to pay down the outstanding bond

principal, viability, and yield sales revenue to reimburse the City for foregone property tax revenue.

3. The Project's funding for capital reserves appears to be inadequate to meet the Project's needs throughout the 35-year projected regulatory period.
4. The sale of the Project at the end of the 30-year term could potentially yield significant proceeds to the City. As projected by Waterford, the City could receive a net return of \$95 million (2021 dollars) if the Project is sold at fair market value and all taxing agencies are reimbursed for foregone property taxes. However, the size of the net surplus is very sensitive to the operations of the Project, future market conditions and factors over which the City has no control. If the projection is modified to reflect a more conservative assumption regarding rent increases (2% per year rather than 3%) and includes a capital investment in year 30, the projected return to the City drops dramatically. Under that scenario, it is projected that net sales revenues would not be sufficient to reimburse all of the taxing agencies for foregone property tax revenues and fund the capital replacement investment. If the City only reimburses itself and funds the capital investment, it is anticipated that the City's net return would approximate \$24.2 million in 2021 dollars. This return is marginal given the level of risk involved with the Project.
5. As proposed the Project's financing does not require an investment of cash equity and all debt is secured solely by the revenue generated by the Project. The structure of the transaction provides significant up-front compensation to the Administrator, CSCDA, and the current owner of the Project. In contrast, the potential financial returns to the bond holders, the City and other taxing agencies are subject to risk and the financial performance of the project.

C. Recommendations

If the City elects to participate in the CSCDA program, we recommend the following:

1. The rent reductions should be set at levels that are below market rate levels in Milpitas so that the Project truly delivers enhanced affordability. The proposed rent levels exceed average market rate rental rates, which largely nullifies the argument that the Project will enhance the affordability of apartments in Milpitas.
2. Rent and income restrictions contained in the Regulatory Agreement should conform to the Department of Housing and Community Development (HCD) income and rent formulas. As proposed, the rent and income formulas are not consistent with the HCD formulas and result in significantly higher rents than what would be permitted by HCD.

3. The Property Condition Report should address the Project's needs for a 34-year term and the Project's financing plan provide funding to cover the anticipated capital improvement costs over the 34-year term. The draft property condition report only addresses 12 years of needs. The proposed annual contributions for capital improvements appears to be inadequate.
4. Any refinancing of Project debt should be subject to the City's approval.
5. The Project should be required to submit proposed rent increases to the City's approval to ensure that the affordability restrictions are enforced.
6. The Project should be required to submit an annual report to the City demonstrating that the affordability covenants are being properly implemented and enforced.
7. The Administrator should be obligated to certify that the affordability covenants are being properly implemented and enforced.
8. The Project's cash flow projection should be based on more conservative assumptions to reduce the level of risk and provide greater assurance for long-term viability.
9. The bond underwriting assumptions should be reviewed by an underwriter retained by the City and the City's Financial Advisor to ensure that the financial structure is sound and consistent with industry standards for multifamily revenue bonds and is appropriate for the City's participation.
10. Greystar should be required to submit its tenant selection plan, maintenance plan, staffing plan and marketing plan for the City's approval.
11. Greystar should be required to submit annual reports on the Project's operations, including the Project's rent roll, that clearly track the annual increase in rental rates, operating expenses, capital improvements, vacancy rates, bond interest and redemption payments, and all bond specific payments.

IX. LIMITING CONDITIONS

1. KMA is not advising or recommending any action be taken by the City with respect to any prospective, new or existing municipal financial products or issuance of municipal securities (including with respect to the structure, timing, terms and other similar matters concerning such financial products or issues);
2. KMA is not acting as a Municipal Advisor to the City and does not assume any fiduciary duty hereunder, including, without limitation, a fiduciary duty to the City pursuant to Section 15B of the Exchange Act with respect to the services provided hereunder and any information and material contained in KMA's work product; and
3. The City shall discuss any such information and material contained in KMA's work product with any and all internal and/or external advisors and experts, including its own municipal advisors, that it deems appropriate before acting on the information and material.

Table 1
Comparison of Turing Rental Rates to Rents of Other Market Rate Rental Units in Milpitas
City of Milpitas, CA

			Studio				One Bedrooms				Two Bedrooms				Three Bedrooms			
Building Name	Year Built	Total Units	# of Units	SF/ Unit	Rent	Rent/SF	# of Units	SF/ Unit	Rent	Rent/SF	# of Units	SF/ Unit	Rent	Rent/SF	# of Units	SF/ Unit	Rent	Rent/SF
Subject Property - Turing - Avg. Current Effective Rents ¹			19	563	\$2,278	\$4.05	193	778	\$2,923	\$3.76	150	1,157	\$3,427	\$2.96	9	1,667	\$5,327	\$3.20
Subject Property- Turing - Proposed Avg. Rents																		
At 80%			6.3		\$2,004	\$3.56	64.3		\$2,572	\$3.31	50		\$3,015	\$2.61	3		\$3,866	\$2.32
At 100%			6.3		\$2,050	\$3.64	64.3		\$2,631	\$3.38	50		\$3,084	\$2.67	3		\$4,794	\$2.88
At 120%			6.3		<u>\$2,096</u>	<u>\$3.72</u>	64.3		<u>\$2,689</u>	<u>\$3.46</u>	50		<u>\$3,152</u>	<u>\$2.72</u>	3		<u>\$4,901</u>	<u>\$2.94</u>
Average					\$2,050	\$3.64			\$2,631	\$3.38			\$3,084	\$2.67			\$4,520	\$2.71
Proposed Change in Monthly Rental Rates																		
At 80%					\$274				\$351				\$412				\$1,461	
At 100%					\$228				\$292				\$343				\$533	
At 120%					<u>\$182</u>				<u>\$234</u>				<u>\$275</u>				<u>\$426</u>	
Average					\$228				\$292				\$343				\$807	
Market Rate Units in Milpitas ²																		
Anton Aspire	2020	317	36	542	\$2,225	\$4.11	161	731	\$2,668	\$3.65	120	1,104	\$3,398	\$3.08				
The Edge Apartments	2018	381					146	666	\$2,353	\$3.53	235	892	\$3,073	\$3.45				
Capitol 650	2018	351					245	750	\$2,856	\$3.81	106	1,117	\$3,657	\$3.28				
Amalfi Apartments	2015	378					191	690	\$2,270	\$3.29	187	870	\$2,813	\$3.23				
ILARA Apartments	2015	200	30	578	\$2,142	\$3.71	45	767	\$2,387	\$3.11	125	1,136	\$3,042	\$2.68				
Apex	2014	366	23	581	\$2,062	\$3.55	149	736	\$2,271	\$3.08	125	1,044	\$2,858	\$2.74	69	1,275	\$3,515	\$2.76
Mill Creek Apartments	1991	516					180	644	\$2,132	\$3.31	276	959	\$2,604	\$2.72	60	1,303	\$3,439	\$2.64
Spinnaker Pointe Apartments	1989	220					100	718	\$1,792	\$2.50	120	900	\$2,596	\$2.88				
555 Apartments	1973	137					40	635	\$2,159	\$3.40	65	850	\$2,590	\$3.05	32	974	\$2,983	\$3.06
Spring Valley Apartment Homes	1963	120					29	606	\$1,885	\$3.11	62	832	\$1,979	\$2.38	29	1,006	\$2,959	\$2.94
Weighted Average Rents, Milpitas Apts.		2,986	89	564	\$2,155	\$3.83	1,286	704	\$2,376	\$3.37	1,421	968	\$2,887	\$2.99	190	1,192	\$3,317	\$2.80

Difference between <u>Current</u> Turing Rents and Market Rents					\$123	\$0.22			\$547	\$0.39			\$540	-\$0.03			\$2,010	\$0.40
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Difference between <u>Proposed</u> Average Turing Rents and Market Rents					-\$105	-\$0.19			\$254	\$0.01			\$197	-\$0.33			\$1,204	-\$0.09
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¹ Source: Cash Flow projection provided by property owner. Averages differ slightly from those calculated by KMA in Table 3.

² Source : CoStar. Effective rents for apartments with more than 100 units.

Table 2
Affordability of Turing and Market Rate Rental Apartments in Milpitas
City of Milpitas, CA

	Market Rate Rentals in Milpitas				Current Turing Rents				Proposed Average Turing Rents, Existing Income Eligible Hhlds. ⁴			
	Studio	One Bedroom	Two Bedroom	Three Bedroom	Studio	One Bedroom	Two Bedroom	Three Bedroom	Studio	One Bedroom	Two Bedroom	Three Bedroom
Average Monthly Effective Rent ¹	\$2,155	\$2,376	\$2,887	\$3,317	\$2,278	\$2,923	\$3,427	\$5,327	\$2,050	\$2,631	\$3,084	\$4,520
Annual Rent	\$25,859	\$28,518	\$34,643	\$39,798	\$27,336	\$35,076	\$41,124	\$63,924	\$24,600	\$31,568	\$37,004	\$54,245
Annual Utility Expenses ²	\$2,136	\$2,232	\$2,592	\$2,952	\$2,136	\$2,232	\$2,592	\$2,952	\$2,136	\$2,232	\$2,592	\$2,952
Total Annual Housing Expenses	\$27,995	\$30,750	\$37,235	\$42,750	\$29,472	\$37,308	\$43,716	\$66,876	\$26,736	\$33,800	\$39,596	\$57,197
Est. Renter's Gross Household Income assuming 30% of income is spent on housing costs	\$93,316	\$102,499	\$124,118	\$142,501	\$98,240	\$124,360	\$145,720	\$222,920	\$89,120	\$112,667	\$131,987	\$190,655
Area Median Household Income 2021 ³												
Hhld of One Person	\$105,900				\$105,900				\$105,900			
Hhld of Two People		\$121,050				\$121,050				\$121,050		
Hhld of Three People			\$136,150				\$136,150				\$136,150	
Hhld of Four People				\$151,300				\$151,300				\$151,300
Affordability Level of Rent as a % of AMI (Per HCD Regulations)	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Above Moderate	Moderate ⁴	Moderate	Moderate	Above Moderate
Hhld of One Person	88%				93%				84%			
Hhld of Two People		85%				103%				93%		
Hhld of Three People			91%				107%				97%	
Hhld of Four People				94%				147%				126%

¹ See Table 1.

² Source: Santa Clara County Housing Authority. Assumes tenant pays for electricity, electric heat, water, gas, sewer, trash.

³ Source: HCD. Per the California Government code, affordable rents are calculated based on an assumed household size equal to the number of bedrooms plus 1.

⁴ Property owner is proposing the restricted rents will be split evenly between 80%, 100% and 120% AMI. This calculation is based on the average rents.

Table 3**Affordability of Current Rents for Occupied Units Relative to HCD Requirements****Turing Apartments****City of Milpitas, CA**

Unit Type	Current Lease Rent	Annual Lease Rent	Annual Utility Allowance	Total Housing Expenses	HCD Requirements	
					Household Income Required @ 30%	Percent of AMI
A1	\$2,943	\$35,316	\$2,232	\$37,548	\$125,160	103%
A1	\$2,780	\$33,360	\$2,232	\$35,592	\$118,640	98%
A1	\$2,475	\$29,700	\$2,232	\$31,932	\$106,440	88%
A1	\$2,535	\$30,420	\$2,232	\$32,652	\$108,840	90%
A2	\$2,875	\$34,500	\$2,232	\$36,732	\$122,440	101%
A2	\$2,575	\$30,900	\$2,232	\$33,132	\$110,440	91%
A2	\$2,560	\$30,720	\$2,232	\$32,952	\$109,840	91%
A2	\$2,445	\$29,340	\$2,232	\$31,572	\$105,240	87%
A2	\$2,195	\$26,340	\$2,232	\$28,572	\$95,240	79%
A2	\$2,950	\$35,400	\$2,232	\$37,632	\$125,440	104%
A2	\$2,650	\$31,800	\$2,232	\$34,032	\$113,440	94%
A2	\$2,350	\$28,200	\$2,232	\$30,432	\$101,440	84%
A2	\$2,650	\$31,800	\$2,232	\$34,032	\$113,440	94%
A2	\$2,560	\$30,720	\$2,232	\$32,952	\$109,840	91%
A2	\$2,860	\$34,320	\$2,232	\$36,552	\$121,840	101%
A2	\$2,868	\$34,416	\$2,232	\$36,648	\$122,160	101%
A2	\$2,645	\$31,740	\$2,232	\$33,972	\$113,240	94%
A2	\$2,816	\$33,792	\$2,232	\$36,024	\$120,080	99%
A2	\$2,816	\$33,792	\$2,232	\$36,024	\$120,080	99%
A2	\$2,345	\$28,140	\$2,232	\$30,372	\$101,240	84%
A2	\$2,645	\$31,740	\$2,232	\$33,972	\$113,240	94%
A2	\$2,808	\$33,696	\$2,232	\$35,928	\$119,760	99%
A2	\$2,858	\$34,296	\$2,232	\$36,528	\$121,760	101%
A2	\$2,260	\$27,120	\$2,232	\$29,352	\$97,840	81%
A2	\$2,645	\$31,740	\$2,232	\$33,972	\$113,240	94%
A2	\$2,195	\$26,340	\$2,232	\$28,572	\$95,240	79%
A2	\$2,560	\$30,720	\$2,232	\$32,952	\$109,840	91%
A2	\$2,645	\$31,740	\$2,232	\$33,972	\$113,240	94%
A2	\$2,345	\$28,140	\$2,232	\$30,372	\$101,240	84%
A2	\$2,870	\$34,440	\$2,232	\$36,672	\$122,240	101%
A2	\$2,645	\$31,740	\$2,232	\$33,972	\$113,240	94%
A2	\$2,385	\$28,620	\$2,232	\$30,852	\$102,840	85%
A2	\$2,891	\$34,692	\$2,232	\$36,924	\$123,080	102%
A2	\$2,870	\$34,440	\$2,232	\$36,672	\$122,240	101%
A2	\$2,450	\$29,400	\$2,232	\$31,632	\$105,440	87%
A2	\$2,450	\$29,400	\$2,232	\$31,632	\$105,440	87%
A2	\$2,575	\$30,900	\$2,232	\$33,132	\$110,440	91%
A2	\$2,475	\$29,700	\$2,232	\$31,932	\$106,440	88%
A2	\$2,485	\$29,820	\$2,232	\$32,052	\$106,840	88%
A2	\$2,375	\$28,500	\$2,232	\$30,732	\$102,440	85%
A2	\$2,275	\$27,300	\$2,232	\$29,532	\$98,440	81%

Unit Type	Current Lease Rent	Annual Lease Rent	Annual Utility Allowance	Total Housing Expenses	HCD Requirements	
					Household Income Required @ 30%	Percent of AMI
A2	\$2,883	\$34,596	\$2,232	\$36,828	\$122,760	101%
A2	\$2,475	\$29,700	\$2,232	\$31,932	\$106,440	88%
A2	\$2,575	\$30,900	\$2,232	\$33,132	\$110,440	91%
A2	\$2,906	\$34,872	\$2,232	\$37,104	\$123,680	102%
A2	\$2,745	\$32,940	\$2,232	\$35,172	\$117,240	97%
A2	\$2,575	\$30,900	\$2,232	\$33,132	\$110,440	91%
A2	\$2,275	\$27,300	\$2,232	\$29,532	\$98,440	81%
A2	\$2,685	\$32,220	\$2,232	\$34,452	\$114,840	95%
A2	\$2,903	\$34,836	\$2,232	\$37,068	\$123,560	102%
A2	\$2,871	\$34,452	\$2,232	\$36,684	\$122,280	101%
A2	\$2,650	\$31,800	\$2,232	\$34,032	\$113,440	94%
A2	\$2,814	\$33,768	\$2,232	\$36,000	\$120,000	99%
A2	\$2,275	\$27,300	\$2,232	\$29,532	\$98,440	81%
A2	\$2,512	\$30,144	\$2,232	\$32,376	\$107,920	89%
A2	\$2,705	\$32,460	\$2,232	\$34,692	\$115,640	96%
A2	\$2,605	\$31,260	\$2,232	\$33,492	\$111,640	92%
A2	\$2,395	\$28,740	\$2,232	\$30,972	\$103,240	85%
A2	\$2,885	\$34,620	\$2,232	\$36,852	\$122,840	101%
A2	\$2,888	\$34,656	\$2,232	\$36,888	\$122,960	102%
A2	\$2,390	\$28,680	\$2,232	\$30,912	\$103,040	85%
A2	\$2,630	\$31,560	\$2,232	\$33,792	\$112,640	93%
A2	\$2,320	\$27,840	\$2,232	\$30,072	\$100,240	83%
A2	\$2,951	\$35,412	\$2,232	\$37,644	\$125,480	104%
A2	\$3,011	\$36,132	\$2,232	\$38,364	\$127,880	106%
A3	\$2,295	\$27,540	\$2,232	\$29,772	\$99,240	82%
A3	\$2,854	\$34,248	\$2,232	\$36,480	\$121,600	100%
A3	\$2,900	\$34,800	\$2,232	\$37,032	\$123,440	102%
A3	\$2,900	\$34,800	\$2,232	\$37,032	\$123,440	102%
A3	\$2,395	\$28,740	\$2,232	\$30,972	\$103,240	85%
A4	\$2,575	\$30,900	\$2,232	\$33,132	\$110,440	91%
A4	\$2,755	\$33,060	\$2,232	\$35,292	\$117,640	97%
A4	\$2,815	\$33,780	\$2,232	\$36,012	\$120,040	99%
A4	\$2,480	\$29,760	\$2,232	\$31,992	\$106,640	88%
A4	\$3,077	\$36,924	\$2,232	\$39,156	\$130,520	108%
A4	\$2,280	\$27,360	\$2,232	\$29,592	\$98,640	81%
A4	\$2,195	\$26,340	\$2,232	\$28,572	\$95,240	79%
A4	\$2,475	\$29,700	\$2,232	\$31,932	\$106,440	88%
A4	\$2,315	\$27,780	\$2,232	\$30,012	\$100,040	83%
A4	\$3,055	\$36,660	\$2,232	\$38,892	\$129,640	107%
A4	\$2,680	\$32,160	\$2,232	\$34,392	\$114,640	95%
A4	\$2,605	\$31,260	\$2,232	\$33,492	\$111,640	92%
A4	\$2,380	\$28,560	\$2,232	\$30,792	\$102,640	85%
A4	\$2,755	\$33,060	\$2,232	\$35,292	\$117,640	97%
A4	\$2,650	\$31,800	\$2,232	\$34,032	\$113,440	94%
A4	\$2,590	\$31,080	\$2,232	\$33,312	\$111,040	92%
A4	\$2,390	\$28,680	\$2,232	\$30,912	\$103,040	85%

Unit Type	Current Lease Rent	Annual Lease Rent	Annual Utility Allowance	Total Housing Expenses	HCD Requirements	
					Household Income Required @ 30%	Percent of AMI
A4	\$2,680	\$32,160	\$2,232	\$34,392	\$114,640	95%
A4	\$2,680	\$32,160	\$2,232	\$34,392	\$114,640	95%
A4	\$2,390	\$28,680	\$2,232	\$30,912	\$103,040	85%
A4	\$2,475	\$29,700	\$2,232	\$31,932	\$106,440	88%
A4	\$2,980	\$35,760	\$2,232	\$37,992	\$126,640	105%
A4	\$2,300	\$27,600	\$2,232	\$29,832	\$99,440	82%
A4	\$2,745	\$32,940	\$2,232	\$35,172	\$117,240	97%
A4	\$2,565	\$30,780	\$2,232	\$33,012	\$110,040	91%
A4	\$2,962	\$35,544	\$2,232	\$37,776	\$125,920	104%
A4	\$2,977	\$35,724	\$2,232	\$37,956	\$126,520	105%
A4	\$2,980	\$35,760	\$2,232	\$37,992	\$126,640	105%
A4	\$2,690	\$32,280	\$2,232	\$34,512	\$115,040	95%
A4	\$2,987	\$35,844	\$2,232	\$38,076	\$126,920	105%
A4	\$2,795	\$33,540	\$2,232	\$35,772	\$119,240	99%
A4	\$2,650	\$31,800	\$2,232	\$34,032	\$113,440	94%
A4	\$2,690	\$32,280	\$2,232	\$34,512	\$115,040	95%
A4	\$2,790	\$33,480	\$2,232	\$35,712	\$119,040	98%
A4	\$3,000	\$36,000	\$2,232	\$38,232	\$127,440	105%
A4	\$2,635	\$31,620	\$2,232	\$33,852	\$112,840	93%
A4	\$2,675	\$32,100	\$2,232	\$34,332	\$114,440	95%
A4	\$2,580	\$30,960	\$2,232	\$33,192	\$110,640	91%
A4	\$2,965	\$35,580	\$2,232	\$37,812	\$126,040	104%
A4	\$2,965	\$35,580	\$2,232	\$37,812	\$126,040	104%
A4	\$2,565	\$30,780	\$2,232	\$33,012	\$110,040	91%
A4	\$2,390	\$28,680	\$2,232	\$30,912	\$103,040	85%
A4	\$2,980	\$35,760	\$2,232	\$37,992	\$126,640	105%
A4	\$2,980	\$35,760	\$2,232	\$37,992	\$126,640	105%
A4	\$2,580	\$30,960	\$2,232	\$33,192	\$110,640	91%
A4	\$2,280	\$27,360	\$2,232	\$29,592	\$98,640	81%
A4	\$2,580	\$30,960	\$2,232	\$33,192	\$110,640	91%
A4	\$2,455	\$29,460	\$2,232	\$31,692	\$105,640	87%
A4	\$2,645	\$31,740	\$2,232	\$33,972	\$113,240	94%
A4	\$2,495	\$29,940	\$2,232	\$32,172	\$107,240	89%
A4	\$2,995	\$35,940	\$2,232	\$38,172	\$127,240	105%
A4	\$2,405	\$28,860	\$2,232	\$31,092	\$103,640	86%
A4	\$3,002	\$36,024	\$2,232	\$38,256	\$127,520	105%
A4	\$2,590	\$31,080	\$2,232	\$33,312	\$111,040	92%
A4	\$2,300	\$27,600	\$2,232	\$29,832	\$99,440	82%
A4	\$2,405	\$28,860	\$2,232	\$31,092	\$103,640	86%
A4	\$2,755	\$33,060	\$2,232	\$35,292	\$117,640	97%
A4	\$3,012	\$36,144	\$2,232	\$38,376	\$127,920	106%
A4	\$2,942	\$35,304	\$2,232	\$37,536	\$125,120	103%
A4	\$2,987	\$35,844	\$2,232	\$38,076	\$126,920	105%
A4	\$2,495	\$29,940	\$2,232	\$32,172	\$107,240	89%
A4	\$2,280	\$27,360	\$2,232	\$29,592	\$98,640	81%
A4	\$2,977	\$35,724	\$2,232	\$37,956	\$126,520	105%

Unit Type	Current Lease Rent	Annual Lease Rent	Annual Utility Allowance	Total Housing Expenses	HCD Requirements	
					Household Income Required @ 30%	Percent of AMI
A4	\$2,580	\$30,960	\$2,232	\$33,192	\$110,640	91%
A4	\$2,590	\$31,080	\$2,232	\$33,312	\$111,040	92%
A4	\$3,005	\$36,060	\$2,232	\$38,292	\$127,640	105%
A4	\$2,255	\$27,060	\$2,232	\$29,292	\$97,640	81%
A4	\$2,680	\$32,160	\$2,232	\$34,392	\$114,640	95%
A4	\$2,977	\$35,724	\$2,232	\$37,956	\$126,520	105%
A4	\$2,977	\$35,724	\$2,232	\$37,956	\$126,520	105%
A4	\$2,410	\$28,920	\$2,232	\$31,152	\$103,840	86%
A4	\$2,680	\$32,160	\$2,232	\$34,392	\$114,640	95%
A4	\$2,550	\$30,600	\$2,232	\$32,832	\$109,440	90%
A4	\$3,022	\$36,264	\$2,232	\$38,496	\$128,320	106%
A4	\$3,035	\$36,420	\$2,232	\$38,652	\$128,840	106%
A4	\$3,032	\$36,384	\$2,232	\$38,616	\$128,720	106%
A4	\$2,705	\$32,460	\$2,232	\$34,692	\$115,640	96%
A4	\$2,480	\$29,760	\$2,232	\$31,992	\$106,640	88%
A4	\$3,035	\$36,420	\$2,232	\$38,652	\$128,840	106%
A4	\$2,645	\$31,740	\$2,232	\$33,972	\$113,240	94%
A4	\$3,042	\$36,504	\$2,232	\$38,736	\$129,120	107%
A4	\$2,255	\$27,060	\$2,232	\$29,292	\$97,640	81%
A4	\$2,720	\$32,640	\$2,232	\$34,872	\$116,240	96%
A4	\$2,725	\$32,700	\$2,232	\$34,932	\$116,440	96%
A4	\$2,610	\$31,320	\$2,232	\$33,552	\$111,840	92%
A4	\$2,610	\$31,320	\$2,232	\$33,552	\$111,840	92%
A4	\$2,480	\$29,760	\$2,232	\$31,992	\$106,640	88%
A4	\$3,005	\$36,060	\$2,232	\$38,292	\$127,640	105%
A4	\$2,255	\$27,060	\$2,232	\$29,292	\$97,640	81%
A4	\$3,017	\$36,204	\$2,232	\$38,436	\$128,120	106%
A4	\$2,995	\$35,940	\$2,232	\$38,172	\$127,240	105%
A4	\$2,610	\$31,320	\$2,232	\$33,552	\$111,840	92%
A4	\$2,595	\$31,140	\$2,232	\$33,372	\$111,240	92%
A4	\$2,745	\$32,940	\$2,232	\$35,172	\$117,240	97%
A4	\$2,995	\$35,940	\$2,232	\$38,172	\$127,240	105%
A4	\$2,650	\$31,800	\$2,232	\$34,032	\$113,440	94%
A4	\$3,065	\$36,780	\$2,232	\$39,012	\$130,040	107%
A4	\$3,050	\$36,600	\$2,232	\$38,832	\$129,440	107%
A4	\$2,200	\$26,400	\$2,232	\$28,632	\$95,440	79%
A4	\$3,025	\$36,300	\$2,232	\$38,532	\$128,440	106%
A4	\$2,790	\$33,480	\$2,232	\$35,712	\$119,040	98%
A4	\$2,625	\$31,500	\$2,232	\$33,732	\$112,440	93%
A4	\$3,022	\$36,264	\$2,232	\$38,496	\$128,320	106%
A4	\$2,565	\$30,780	\$2,232	\$33,012	\$110,040	91%
A4	\$3,100	\$37,200	\$2,232	\$39,432	\$131,440	109%
A4	\$2,900	\$34,800	\$2,232	\$37,032	\$123,440	102%
A4	\$2,395	\$28,740	\$2,232	\$30,972	\$103,240	85%
A4	\$3,012	\$36,144	\$2,232	\$38,376	\$127,920	106%
A4	\$2,885	\$34,620	\$2,232	\$36,852	\$122,840	101%

Unit Type	Current Lease Rent	Annual Lease Rent	Annual Utility Allowance	Total Housing Expenses	HCD Requirements	
					Household Income Required @ 30%	Percent of AMI
A5	\$3,400	\$40,800	\$2,232	\$43,032	\$143,440	118%
A5	\$3,440	\$41,280	\$2,232	\$43,512	\$145,040	120%
A5	\$3,055	\$36,660	\$2,232	\$38,892	\$129,640	107%
A5	\$3,485	\$41,820	\$2,232	\$44,052	\$146,840	121%
A5	\$3,403	\$40,836	\$2,232	\$43,068	\$143,560	119%
B1	\$3,265	\$39,180	\$2,592	\$41,772	\$139,240	102%
B1	\$3,533	\$42,396	\$2,592	\$44,988	\$149,960	110%
B1	\$3,528	\$42,336	\$2,592	\$44,928	\$149,760	110%
B1	\$2,990	\$35,880	\$2,592	\$38,472	\$128,240	94%
B1	\$3,115	\$37,380	\$2,592	\$39,972	\$133,240	98%
B1	\$3,335	\$40,020	\$2,592	\$42,612	\$142,040	104%
B1	\$3,145	\$37,740	\$2,592	\$40,332	\$134,440	99%
B1	\$3,325	\$39,900	\$2,592	\$42,492	\$141,640	104%
B1	\$3,235	\$38,820	\$2,592	\$41,412	\$138,040	101%
B2	\$3,563	\$42,756	\$2,592	\$45,348	\$151,160	111%
B2	\$3,705	\$44,460	\$2,592	\$47,052	\$156,840	115%
B2	\$3,440	\$41,280	\$2,592	\$43,872	\$146,240	107%
B2	\$3,495	\$41,940	\$2,592	\$44,532	\$148,440	109%
B3	\$3,552	\$42,624	\$2,592	\$45,216	\$150,720	111%
B3	\$3,350	\$40,200	\$2,592	\$42,792	\$142,640	105%
B3	\$3,835	\$46,020	\$2,592	\$48,612	\$162,040	119%
B3	\$3,275	\$39,300	\$2,592	\$41,892	\$139,640	103%
B3	\$3,425	\$41,100	\$2,592	\$43,692	\$145,640	107%
B3	\$3,275	\$39,300	\$2,592	\$41,892	\$139,640	103%
B3	\$3,110	\$37,320	\$2,592	\$39,912	\$133,040	98%
B3	\$3,410	\$40,920	\$2,592	\$43,512	\$145,040	107%
B3	\$3,525	\$42,300	\$2,592	\$44,892	\$149,640	110%
B3	\$3,295	\$39,540	\$2,592	\$42,132	\$140,440	103%
B3	\$3,295	\$39,540	\$2,592	\$42,132	\$140,440	103%
B3	\$3,095	\$37,140	\$2,592	\$39,732	\$132,440	97%
B3	\$3,295	\$39,540	\$2,592	\$42,132	\$140,440	103%
B3	\$3,095	\$37,140	\$2,592	\$39,732	\$132,440	97%
B3	\$3,395	\$40,740	\$2,592	\$43,332	\$144,440	106%
B3	\$3,245	\$38,940	\$2,592	\$41,532	\$138,440	102%
B3	\$3,510	\$42,120	\$2,592	\$44,712	\$149,040	109%
B3	\$3,110	\$37,320	\$2,592	\$39,912	\$133,040	98%
B3	\$3,805	\$45,660	\$2,592	\$48,252	\$160,840	118%
B3	\$3,195	\$38,340	\$2,592	\$40,932	\$136,440	100%
B3	\$3,395	\$40,740	\$2,592	\$43,332	\$144,440	106%
B3	\$3,195	\$38,340	\$2,592	\$40,932	\$136,440	100%
B3	\$3,295	\$39,540	\$2,592	\$42,132	\$140,440	103%
B3	\$3,295	\$39,540	\$2,592	\$42,132	\$140,440	103%
B3	\$3,395	\$40,740	\$2,592	\$43,332	\$144,440	106%
B3	\$3,225	\$38,700	\$2,592	\$41,292	\$137,640	101%
B3	\$3,000	\$36,000	\$2,592	\$38,592	\$128,640	94%
B3	\$2,975	\$35,700	\$2,592	\$38,292	\$127,640	94%

Unit Type	Current Lease Rent	Annual Lease Rent	Annual Utility Allowance	Total Housing Expenses	HCD Requirements	
					Household Income Required @ 30%	Percent of AMI
B3	\$3,846	\$46,152	\$2,592	\$48,744	\$162,480	119%
B3	\$3,500	\$42,000	\$2,592	\$44,592	\$148,640	109%
B3	\$3,195	\$38,340	\$2,592	\$40,932	\$136,440	100%
B3	\$3,335	\$40,020	\$2,592	\$42,612	\$142,040	104%
B3	\$3,195	\$38,340	\$2,592	\$40,932	\$136,440	100%
B3	\$3,225	\$38,700	\$2,592	\$41,292	\$137,640	101%
B3	\$3,225	\$38,700	\$2,592	\$41,292	\$137,640	101%
B3	\$2,990	\$35,880	\$2,592	\$38,472	\$128,240	94%
B3	\$3,771	\$45,252	\$2,592	\$47,844	\$159,480	117%
B3	\$3,065	\$36,780	\$2,592	\$39,372	\$131,240	96%
B3	\$3,525	\$42,300	\$2,592	\$44,892	\$149,640	110%
B3	\$3,210	\$38,520	\$2,592	\$41,112	\$137,040	101%
B3	\$3,810	\$45,720	\$2,592	\$48,312	\$161,040	118%
B3	\$3,410	\$40,920	\$2,592	\$43,512	\$145,040	107%
B3	\$3,410	\$40,920	\$2,592	\$43,512	\$145,040	107%
B3	\$2,995	\$35,940	\$2,592	\$38,532	\$128,440	94%
B3	\$3,175	\$38,100	\$2,592	\$40,692	\$135,640	100%
B3	\$3,810	\$45,720	\$2,592	\$48,312	\$161,040	118%
B3	\$3,775	\$45,300	\$2,592	\$47,892	\$159,640	117%
B3	\$3,235	\$38,820	\$2,592	\$41,412	\$138,040	101%
B3	\$3,235	\$38,820	\$2,592	\$41,412	\$138,040	101%
B3	\$3,435	\$41,220	\$2,592	\$43,812	\$146,040	107%
B3	\$3,335	\$40,020	\$2,592	\$42,612	\$142,040	104%
B3	\$3,335	\$40,020	\$2,592	\$42,612	\$142,040	104%
B3	\$3,736	\$44,832	\$2,592	\$47,424	\$158,080	116%
B3	\$3,235	\$38,820	\$2,592	\$41,412	\$138,040	101%
B3	\$3,020	\$36,240	\$2,592	\$38,832	\$129,440	95%
B3	\$3,625	\$43,500	\$2,592	\$46,092	\$153,640	113%
B3	\$3,510	\$42,120	\$2,592	\$44,712	\$149,040	109%
B3	\$3,595	\$43,140	\$2,592	\$45,732	\$152,440	112%
B3	\$3,525	\$42,300	\$2,592	\$44,892	\$149,640	110%
B3	\$3,110	\$37,320	\$2,592	\$39,912	\$133,040	98%
B3	\$3,110	\$37,320	\$2,592	\$39,912	\$133,040	98%
B3	\$3,810	\$45,720	\$2,592	\$48,312	\$161,040	118%
B3	\$3,810	\$45,720	\$2,592	\$48,312	\$161,040	118%
B3	\$3,355	\$40,260	\$2,592	\$42,852	\$142,840	105%
B3	\$3,455	\$41,460	\$2,592	\$44,052	\$146,840	108%
B3	\$3,305	\$39,660	\$2,592	\$42,252	\$140,840	103%
B3	\$3,225	\$38,700	\$2,592	\$41,292	\$137,640	101%
B3	\$3,355	\$40,260	\$2,592	\$42,852	\$142,840	105%
B3	\$3,455	\$41,460	\$2,592	\$44,052	\$146,840	108%
B3	\$3,250	\$39,000	\$2,592	\$41,592	\$138,640	102%
B3	\$3,250	\$39,000	\$2,592	\$41,592	\$138,640	102%
B3	\$3,668	\$44,016	\$2,592	\$46,608	\$155,360	114%
B3	\$3,335	\$40,020	\$2,592	\$42,612	\$142,040	104%
B3	\$3,350	\$40,200	\$2,592	\$42,792	\$142,640	105%

Unit Type	Current Lease Rent	Annual Lease Rent	Annual Utility Allowance	Total Housing Expenses	HCD Requirements	
					Household Income Required @ 30%	Percent of AMI
B3	\$3,250	\$39,000	\$2,592	\$41,592	\$138,640	102%
B3	\$3,450	\$41,400	\$2,592	\$43,992	\$146,640	108%
B3	\$3,250	\$39,000	\$2,592	\$41,592	\$138,640	102%
B3	\$3,250	\$39,000	\$2,592	\$41,592	\$138,640	102%
B3	\$3,250	\$39,000	\$2,592	\$41,592	\$138,640	102%
B3	\$3,240	\$38,880	\$2,592	\$41,472	\$138,240	102%
B3	\$3,425	\$41,100	\$2,592	\$43,692	\$145,640	107%
B3	\$3,455	\$41,460	\$2,592	\$44,052	\$146,840	108%
B3	\$3,325	\$39,900	\$2,592	\$42,492	\$141,640	104%
B3	\$3,325	\$39,900	\$2,592	\$42,492	\$141,640	104%
B3	\$3,050	\$36,600	\$2,592	\$39,192	\$130,640	96%
B3	\$3,615	\$43,380	\$2,592	\$45,972	\$153,240	113%
B3	\$3,410	\$40,920	\$2,592	\$43,512	\$145,040	107%
B3	\$3,680	\$44,160	\$2,592	\$46,752	\$155,840	114%
B3	\$3,910	\$46,920	\$2,592	\$49,512	\$165,040	121%
B3	\$3,880	\$46,560	\$2,592	\$49,152	\$163,840	120%
B3	\$3,280	\$39,360	\$2,592	\$41,952	\$139,840	103%
B3	\$3,480	\$41,760	\$2,592	\$44,352	\$147,840	109%
B3	\$3,115	\$37,380	\$2,592	\$39,972	\$133,240	98%
B3	\$3,876	\$46,512	\$2,592	\$49,104	\$163,680	120%
B3	\$3,680	\$44,160	\$2,592	\$46,752	\$155,840	114%
B3	\$3,270	\$39,240	\$2,592	\$41,832	\$139,440	102%
B3	\$3,545	\$42,540	\$2,592	\$45,132	\$150,440	110%
B3	\$3,250	\$39,000	\$2,592	\$41,592	\$138,640	102%
B3	\$3,270	\$39,240	\$2,592	\$41,832	\$139,440	102%
B3	\$3,675	\$44,100	\$2,592	\$46,692	\$155,640	114%
B3	\$4,070	\$48,840	\$2,592	\$51,432	\$171,440	126%
B3	\$3,996	\$47,952	\$2,592	\$50,544	\$168,480	124%
B3	\$3,755	\$45,060	\$2,592	\$47,652	\$158,840	117%
B3	\$3,570	\$42,840	\$2,592	\$45,432	\$151,440	111%
B3	\$3,745	\$44,940	\$2,592	\$47,532	\$158,440	116%
B3	\$3,745	\$44,940	\$2,592	\$47,532	\$158,440	116%
B3	\$4,015	\$48,180	\$2,592	\$50,772	\$169,240	124%
B3	\$3,615	\$43,380	\$2,592	\$45,972	\$153,240	113%
B4	\$3,505	\$42,060	\$2,592	\$44,652	\$148,840	109%
B4	\$3,345	\$40,140	\$2,592	\$42,732	\$142,440	105%
B4	\$3,782	\$45,384	\$2,592	\$47,976	\$159,920	117%
B4	\$3,827	\$45,924	\$2,592	\$48,516	\$161,720	119%
C1	\$5,245	\$62,940	\$2,952	\$65,892	\$219,640	145%
C1	\$4,890	\$58,680	\$2,952	\$61,632	\$205,440	136%
C1	\$5,150	\$61,800	\$2,952	\$64,752	\$215,840	143%
C2	\$5,747	\$68,964	\$2,952	\$71,916	\$239,720	158%
C2	\$5,795	\$69,540	\$2,952	\$72,492	\$241,640	160%
C2	\$5,210	\$62,520	\$2,952	\$65,472	\$218,240	144%
C2	\$5,500	\$66,000	\$2,952	\$68,952	\$229,840	152%
J1	\$2,534	\$30,408	\$2,136	\$32,544	\$108,480	102%

Unit Type	Current Lease Rent	Annual Lease Rent	Annual Utility Allowance	Total Housing Expenses	HCD Requirements	
					Household Income Required @ 30%	Percent of AMI
J1	\$2,095	\$25,140	\$2,136	\$27,276	\$90,920	86%
J1	\$2,310	\$27,720	\$2,136	\$29,856	\$99,520	94%
J1	\$2,510	\$30,120	\$2,136	\$32,256	\$107,520	102%
J1	\$2,305	\$27,660	\$2,136	\$29,796	\$99,320	94%
J1	\$2,457	\$29,484	\$2,136	\$31,620	\$105,400	100%
J1	\$2,457	\$29,484	\$2,136	\$31,620	\$105,400	100%
J1	\$2,095	\$25,140	\$2,136	\$27,276	\$90,920	86%
J1	\$2,245	\$26,940	\$2,136	\$29,076	\$96,920	92%
J1	\$1,895	\$22,740	\$2,136	\$24,876	\$82,920	78%
J1	\$1,995	\$23,940	\$2,136	\$26,076	\$86,920	82%
J1	\$1,925	\$23,100	\$2,136	\$25,236	\$84,120	79%
J1	\$2,525	\$30,300	\$2,136	\$32,436	\$108,120	102%
J1	\$2,472	\$29,664	\$2,136	\$31,800	\$106,000	100%
J1	\$2,195	\$26,340	\$2,136	\$28,476	\$94,920	90%
J1	\$2,517	\$30,204	\$2,136	\$32,340	\$107,800	102%
J1	\$1,895	\$22,740	\$2,136	\$24,876	\$82,920	78%
J1	\$2,200	\$26,400	\$2,136	\$28,536	\$95,120	90%
J1	\$2,115	\$25,380	\$2,136	\$27,516	\$91,720	87%

PROJECT AVERAGES

Studios	\$2,250	\$26,995	\$2,136	\$29,131	\$97,103	92%
1 BRs	\$2,693	\$32,320	\$2,232	\$34,552	\$115,174	95%
2 BRs	\$3,415	\$40,977	\$2,592	\$43,569	\$145,231	107%
3 BRs	\$5,362	\$64,349	\$2,952	\$67,301	\$224,337	148%
All Units	\$2,993	\$35,918	\$2,376	\$38,294	\$127,645	100%

Excludes vacant units.

Table 4A

Rent Savings Created by CSCDA Program Compared to Foregone Ad Valorem Property Tax and Property Tax In-lieu of Vehicle License Fee (PTILVLF) Revenues, Assuming 3% Annual Rent Increase
City of Milpitas

Growth Rates

Market Rents	3%
Restricted Rents	3%
Property Taxes	2%

Year	Gross Potential Rent			Foregone Property Tax Payment &
	100% Market Rate	With Restricted Rents	Difference (Rent Savings)	
1	\$14,032,048	\$13,745,495	\$286,553	\$2,289,577
2	\$14,453,010	\$13,486,316	\$966,694	\$2,335,368
3	\$14,886,600	\$13,171,921	\$1,714,679	\$2,382,076
4	\$15,333,198	\$13,567,079	\$1,766,119	\$2,429,717
5	\$15,793,194	\$13,974,091	\$1,819,103	\$2,478,312
6	\$16,266,990	\$14,393,314	\$1,873,676	\$2,527,878
7	\$16,754,999	\$14,825,114	\$1,929,886	\$2,578,435
8	\$17,257,649	\$15,269,867	\$1,987,782	\$2,630,004
9	\$17,775,379	\$15,727,963	\$2,047,416	\$2,682,604
10	\$18,308,640	\$16,199,802	\$2,108,838	\$2,736,256
11	\$18,857,900	\$16,685,796	\$2,172,104	\$2,790,981
12	\$19,423,637	\$17,186,370	\$2,237,267	\$2,846,801
13	\$20,006,346	\$17,701,961	\$2,304,385	\$2,903,737
14	\$20,606,536	\$18,233,020	\$2,373,516	\$2,961,812
15	\$21,224,732	\$18,780,010	\$2,444,722	\$3,021,048
16	\$21,861,474	\$19,343,411	\$2,518,063	\$3,081,469
17	\$22,517,318	\$19,923,713	\$2,593,605	\$3,143,098
18	\$23,192,838	\$20,521,424	\$2,671,413	\$3,205,960
19	\$23,888,623	\$21,137,067	\$2,751,556	\$3,270,080
20	\$24,605,282	\$21,771,179	\$2,834,102	\$3,335,481
21	\$25,343,440	\$22,424,315	\$2,919,126	\$3,402,191
22	\$26,103,743	\$23,097,044	\$3,006,699	\$3,470,235
23	\$26,886,856	\$23,789,955	\$3,096,900	\$3,539,639
24	\$27,693,461	\$24,503,654	\$3,189,807	\$3,610,432
25	\$28,524,265	\$25,238,764	\$3,285,501	\$3,682,641
26	\$29,379,993	\$25,995,926	\$3,384,067	\$3,756,294
27	\$30,261,393	\$26,775,804	\$3,485,589	\$3,831,419
28	\$31,169,235	\$27,579,078	\$3,590,156	\$3,908,048
29	\$32,104,312	\$28,406,451	\$3,697,861	\$3,986,209
30	\$33,067,441	\$29,258,644	\$3,808,797	\$4,065,933
TOTAL	\$667,580,531	\$592,714,550	\$74,865,980	\$92,883,736

Sources: Waterford Residential, Santa Clara County Assessor.

Table 4B

Rent Savings Created by CSCDA Program Compared to Foregone Ad Valorem Property Tax and Property Tax In-lieu of Vehicle License Fee (PTILVLF) Revenues, Assuming Annual 2% Rent Increase
City of Milpitas

Growth Rates

Market Rents	3%
Restricted Rents	2%
Property Taxes	2%

Year	Gross Potential Rent			Foregone Property Tax Payment &
	100% Market Rate	With Restricted Rents	Difference (Rent Savings)	
1	\$14,032,048	\$13,745,495	\$286,553	\$2,289,577
2	\$14,453,010	\$13,419,881	\$1,033,129	\$2,335,368
3	\$14,886,600	\$12,979,782	\$1,906,818	\$2,382,076
4	\$15,333,198	\$13,239,378	\$2,093,820	\$2,429,717
5	\$15,793,194	\$13,504,166	\$2,289,028	\$2,478,312
6	\$16,266,990	\$13,774,249	\$2,492,741	\$2,527,878
7	\$16,754,999	\$14,049,734	\$2,705,266	\$2,578,435
8	\$17,257,649	\$14,330,729	\$2,926,921	\$2,630,004
9	\$17,775,379	\$14,617,343	\$3,158,036	\$2,682,604
10	\$18,308,640	\$14,909,690	\$3,398,950	\$2,736,256
11	\$18,857,900	\$15,207,884	\$3,650,016	\$2,790,981
12	\$19,423,637	\$15,512,041	\$3,911,595	\$2,846,801
13	\$20,006,346	\$15,822,282	\$4,184,063	\$2,903,737
14	\$20,606,536	\$16,138,728	\$4,467,808	\$2,961,812
15	\$21,224,732	\$16,461,502	\$4,763,230	\$3,021,048
16	\$21,861,474	\$16,790,733	\$5,070,742	\$3,081,469
17	\$22,517,318	\$17,126,547	\$5,390,771	\$3,143,098
18	\$23,192,838	\$17,469,078	\$5,723,760	\$3,205,960
19	\$23,888,623	\$17,818,460	\$6,070,163	\$3,270,080
20	\$24,605,282	\$18,174,829	\$6,430,453	\$3,335,481
21	\$25,343,440	\$18,538,325	\$6,805,115	\$3,402,191
22	\$26,103,743	\$18,909,092	\$7,194,651	\$3,470,235
23	\$26,886,856	\$19,287,274	\$7,599,582	\$3,539,639
24	\$27,693,461	\$19,673,019	\$8,020,442	\$3,610,432
25	\$28,524,265	\$20,066,480	\$8,457,785	\$3,682,641
26	\$29,379,993	\$20,467,809	\$8,912,184	\$3,756,294
27	\$30,261,393	\$20,877,165	\$9,384,227	\$3,831,419
28	\$31,169,235	\$21,294,709	\$9,874,526	\$3,908,048
29	\$32,104,312	\$21,720,603	\$10,383,709	\$3,986,209
30	\$33,067,441	\$22,155,015	\$10,912,426	\$4,065,933
TOTAL	\$667,580,531	\$508,082,022	\$159,498,508	\$92,883,736

Sources: Waterford Residential, Santa Clara County Assessor.

Table 5A
Waterford Residential's Net Operating Income Projection for Turing Apartments
City of Milpitas, CA

Assumptions																
Asset	Turing															
County	SANTA CLARA															
Total Units	371															
Total SF	349,349															
AMI	% Target															
80%	33%															
100%	33%															
120%	33%															
100%																
					Max Allowable Rent			Pro Forma Rent								% Discount to In Place
Unit Type	Type	Total Units	SF	Market Rent	80% AMI	100% AMI	120% AMI	Units	80% AMI	Units	100% AMI	Units	120% AMI	Units	Authority Rent	
0 BR	Market	19	563	\$2,278	\$2,707	\$3,383	\$4,060	6	\$2,004	6	\$2,050	6	\$2,096	19	\$2,050	10.00%
1 BR	Market	193	778	\$2,923	\$3,094	\$3,868	\$4,641	64	\$2,572	64	\$2,631	64	\$2,689	193	\$2,631	10.00%
2 BR	Market	150	1,157	\$3,427	\$3,481	\$4,352	\$5,222	50	\$3,015	50	\$3,084	50	\$3,152	150	\$3,084	10.00%
3 BR	Market	9	1,667	\$5,327	\$3,866	\$4,833	\$5,800	3	\$3,866	3	\$4,794	3	\$4,900	9	\$4,520	15.14%
		371	942	\$3,152	\$3,250	\$4,062	\$4,874	124	\$2,754	124	\$2,837	124	\$2,900	371	\$2,830	10.21%

Table 5A
Waterford Residential's Net Operating Income Projection for Turing Apartments
City of Milpitas, CA

Growth Rates							
Turnover	0.00%	20.00%	40.00%	100.00%	100.00%	100.00%	100.00%
Converted Unit Rent	0.00%	0.00%	1.50%	3.00%	3.00%	3.00%	3.00%
Non-Converted Unit Rent	0.00%	0.00%	1.50%	3.00%	3.00%	3.00%	3.00%
Other Income	0.00%	0.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Expenses	0.00%	0.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Utilities	0.00%	0.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Taxes	0.00%	0.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Vacancy	8.00%	8.00%	6.50%	5.00%	5.00%	5.00%	5.00%
COVID 19 Concessions	1.50%	1.50%	0.75%	0.00%	0.00%	0.00%	0.00%
COVID 19 Bad Debt	1.50%	1.50%	0.75%	0.50%	0.50%	0.50%	0.50%
Year	0	1	2	3	4	5	6
Revenue							
% AMI Target Rents	80%						
Converted Units	0	25	64	124	124	124	124
Non-Converted Units	124	99	59	0	0	0	0
Converted Unit Rent	\$2,754	\$2,754	\$2,795	\$2,879	\$2,965	\$3,054	\$3,146
Non-Converted Unit Rent	\$3,152	\$3,152	\$3,199	\$3,295	\$3,394	\$3,496	\$3,601
% AMI Target Rents	100%						
Converted Units	0	25	64	124	124	124	124
Non-Converted Units	124	99	59	0	0	0	0
Converted Unit Rent	\$2,837	\$2,837	\$2,879	\$2,966	\$3,055	\$3,146	\$3,241
Non-Converted Unit Rent	\$3,152	\$3,152	\$3,199	\$3,295	\$3,394	\$3,496	\$3,601
% AMI Target Rents	120%						
Converted Units	0	25	64	124	124	124	124
Non-Converted Units	124	99	59	0	0	0	0
Converted Unit Rent	\$2,900	\$2,900	\$2,943	\$3,031	\$3,122	\$3,216	\$3,313
Non-Converted Unit Rent	\$3,152	\$3,152	\$3,199	\$3,295	\$3,394	\$3,496	\$3,601
Gross Potential Rent	\$14,032,048	\$13,745,495	\$13,486,316	\$13,171,921	\$13,567,079	\$13,974,091	\$14,393,314
LTL	0	0	(101,147)	(197,579)	(203,506)	(209,611)	(215,900)
Gross Scheduled Rent	14,032,048	13,745,495	13,385,169	12,974,343	13,363,573	13,764,480	14,177,414
Vacancy	(1,122,564)	(1,099,640)	(870,036)	(648,717)	(668,179)	(688,224)	(708,871)
COVID 19 Concessions	(210,481)	(206,182)	(100,389)	0	0	0	0
Bad Debt	(210,481)	(206,182)	(100,389)	(64,872)	(66,818)	(68,822)	(70,887)
Non-Revenue Units	(132,178)	(132,178)	(134,161)	(138,186)	(142,331)	(146,601)	(150,999)
Effective Rental Income	12,356,345	12,101,313	12,180,194	12,122,568	12,486,245	12,860,833	13,246,657
Other Income	311,854	311,854	321,210	330,846	340,771	350,994	361,524
Parking Income	0	0	0	0	0	0	0
RUBS	509,868	509,868	525,164	540,919	557,147	573,861	591,077
Total Other Income	821,722	821,722	846,374	871,765	897,918	924,855	952,601
Effective Gross Income	13,178,067	12,923,035	13,026,568	12,994,333	13,384,163	13,785,688	14,199,259
Operating Expenses							
Payroll	779,705	779,705	803,096	827,189	852,005	877,565	903,892
Marketing	176,225	176,225	181,512	186,957	192,566	198,343	204,293
General & Administrative	136,950	136,950	141,059	145,290	149,649	154,138	158,763
Turnover	92,500	92,500	95,275	98,133	101,077	104,110	107,233
Repairs & Maintenance	151,300	151,300	155,839	160,514	165,330	170,289	175,398
Contract Services	405,672	405,672	417,842	430,377	443,289	456,587	470,285
Utilities	679,824	679,824	700,219	721,225	742,862	765,148	788,102
Total Controllable Expenses	2,422,176	2,422,176	2,494,841	2,569,687	2,646,777	2,726,180	2,807,966
Management Fee	230,616	226,153	227,965	227,401	234,223	241,250	248,487
Insurance	224,455	224,455	231,189	238,124	245,268	252,626	260,205
Real Estate Taxes	0	0	0	0	0	0	0
Direct Assessments	264,237	264,237	269,521	274,912	280,410	286,018	291,739
Total Fixed Expenses	719,308	714,845	728,675	740,437	759,901	779,894	800,431
Total Operating Expenses	3,141,484	3,137,021	3,223,516	3,310,124	3,406,678	3,506,074	3,608,396
NET OPERATING INCOME	10,036,583	9,786,014	9,803,052	9,684,209	9,977,485	10,279,614	10,590,862

Prepared by Waterford Residential.

Table 5A
Waterford Residential's Net Operating Income Projection for Turing Apartments
City of Milpitas, CA

Growth Rates								
Turnover	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Converted Unit Rent	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Non-Converted Unit Rent	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Other Income	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Expenses	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Utilities	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Taxes	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Vacancy	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
COVID 19 Concessions	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COVID 19 Bad Debt	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%
Year	7	8	9	10	11	12	13	14
Revenue								
% AMI Target Rents	80%							
Converted Units	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0
Converted Unit Rent	\$3,240	\$3,337	\$3,438	\$3,541	\$3,647	\$3,756	\$3,869	\$3,985
Non-Converted Unit Rent	\$3,709	\$3,820	\$3,935	\$4,053	\$4,174	\$4,299	\$4,428	\$4,561
% AMI Target Rents	100%							
Converted Units	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0
Converted Unit Rent	\$3,338	\$3,438	\$3,541	\$3,647	\$3,757	\$3,869	\$3,986	\$4,105
Non-Converted Unit Rent	\$3,709	\$3,820	\$3,935	\$4,053	\$4,174	\$4,299	\$4,428	\$4,561
% AMI Target Rents	120%							
Converted Units	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0
Converted Unit Rent	\$3,412	\$3,514	\$3,620	\$3,728	\$3,840	\$3,955	\$4,074	\$4,196
Non-Converted Unit Rent	\$3,709	\$3,820	\$3,935	\$4,053	\$4,174	\$4,299	\$4,428	\$4,561
Gross Potential Rent	\$14,825,114	\$15,269,867	\$15,727,963	\$16,199,802	\$16,685,796	\$17,186,370	\$17,701,961	\$18,233,020
LTL	(222,377)	(229,048)	(235,919)	(242,997)	(250,287)	(257,796)	(265,529)	(273,495)
Gross Scheduled Rent	14,602,737	15,040,819	15,492,044	15,956,805	16,435,509	16,928,574	17,436,432	17,959,524
Vacancy	(730,137)	(752,041)	(774,602)	(797,840)	(821,775)	(846,429)	(871,822)	(897,976)
COVID 19 Concessions	0	0	0	0	0	0	0	0
Bad Debt	(73,014)	(75,204)	(77,460)	(79,784)	(82,178)	(84,643)	(87,182)	(89,798)
Non-Revenue Units	(155,529)	(160,195)	(165,001)	(169,951)	(175,049)	(180,301)	(185,710)	(191,281)
Effective Rental Income	13,644,057	14,053,379	14,474,980	14,909,230	15,356,507	15,817,202	16,291,718	16,780,469
Other Income	372,370	383,541	395,047	406,899	419,106	431,679	444,629	457,968
Parking Income	0	0	0	0	0	0	0	0
RUBS	608,809	627,073	645,886	665,262	685,220	705,777	726,950	748,758
Total Other Income	981,179	1,010,614	1,040,933	1,072,161	1,104,326	1,137,455	1,171,579	1,206,726
Effective Gross Income	14,625,236	15,063,993	15,515,913	15,981,391	16,460,832	16,954,657	17,463,297	17,987,196
Operating Expenses								
Payroll	931,009	958,939	987,707	1,017,338	1,047,858	1,079,294	1,111,673	1,145,023
Marketing	210,422	216,735	223,237	229,934	236,832	243,937	251,255	258,792
General & Administrative	163,525	168,431	173,484	178,689	184,049	189,571	195,258	201,116
Turnover	110,450	113,763	117,176	120,692	124,312	128,042	131,883	135,839
Repairs & Maintenance	180,660	186,080	191,662	197,412	203,335	209,435	215,718	222,189
Contract Services	484,394	498,925	513,893	529,310	545,189	561,545	578,391	595,743
Utilities	811,745	836,098	861,181	887,016	913,627	941,035	969,266	998,344
Total Controllable Expenses	2,892,205	2,978,971	3,068,340	3,160,390	3,255,202	3,352,858	3,453,444	3,557,047
Management Fee	255,942	263,620	271,528	279,674	288,065	296,707	305,608	314,776
Insurance	268,011	276,051	284,333	292,863	301,649	310,698	320,019	329,620
Real Estate Taxes	0	0	0	0	0	0	0	0
Direct Assessments	297,573	303,525	309,595	315,787	322,103	328,545	335,116	341,818
Total Fixed Expenses	821,526	843,196	865,457	888,325	911,816	935,950	960,743	986,214
Total Operating Expenses	3,713,731	3,822,167	3,933,797	4,048,715	4,167,018	4,288,808	4,414,187	4,543,261
NET OPERATING INCOME	10,911,505	11,241,826	11,582,116	11,932,676	12,293,814	12,665,849	13,049,110	13,443,935

Prepared by Waterford Residentic

Table 5A
Waterford Residential's Net Operating Income Projection for Turing Apartments
City of Milpitas, CA

Growth Rates							
Turnover	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Converted Unit Rent	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Non-Converted Unit Rent	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Other Income	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Expenses	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Utilities	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Taxes	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Vacancy	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
COVID 19 Concessions	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COVID 19 Bad Debt	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%
Year	15	30	31	32	33	34	35
Revenue							
% AMI Target Rents	80%						
Converted Units	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0
Converted Unit Rent	\$4,105	\$6,395	\$6,587	\$6,784	\$6,988	\$7,197	\$7,413
Non-Converted Unit Rent	\$4,698	\$7,319	\$7,539	\$7,765	\$7,998	\$8,238	\$8,485
% AMI Target Rents	100%						
Converted Units	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0
Converted Unit Rent	\$4,228	\$6,587	\$6,785	\$6,989	\$7,198	\$7,414	\$7,637
Non-Converted Unit Rent	\$4,698	\$7,319	\$7,539	\$7,765	\$7,998	\$8,238	\$8,485
% AMI Target Rents	120%						
Converted Units	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0
Converted Unit Rent	\$4,322	\$6,734	\$6,936	\$7,144	\$7,358	\$7,579	\$7,806
Non-Converted Unit Rent	\$4,698	\$7,319	\$7,539	\$7,765	\$7,998	\$8,238	\$8,485
Gross Potential Rent	\$18,780,010	\$29,258,644	\$30,136,404	\$31,040,496	\$31,971,711	\$32,930,862	\$33,918,788
LTL	(281,700)	(438,880)	(452,046)	(465,607)	(479,576)	(493,963)	(508,782)
Gross Scheduled Rent	18,498,310	28,819,765	29,684,358	30,574,888	31,492,135	32,436,899	33,410,006
Vacancy	(924,916)	(1,440,988)	(1,484,218)	(1,528,744)	(1,574,607)	(1,621,845)	(1,670,500)
COVID 19 Concessions	0	0	0	0	0	0	0
Bad Debt	(92,492)	(144,099)	(148,422)	(152,874)	(157,461)	(162,184)	(167,050)
Non-Revenue Units	(197,020)	(306,950)	(316,159)	(325,644)	(335,413)	(345,475)	(355,839)
Effective Rental Income	17,283,883	26,927,727	27,735,559	28,567,626	29,424,655	30,307,394	31,216,616
Other Income	471,707	734,904	756,952	779,660	803,050	827,141	851,956
Parking Income	0	0	0	0	0	0	0
RUBS	771,221	1,201,537	1,237,583	1,274,711	1,312,952	1,352,341	1,392,911
Total Other Income	1,242,928	1,936,442	1,994,535	2,054,371	2,116,002	2,179,482	2,244,867
Effective Gross Income	18,526,812	28,864,169	29,730,094	30,621,997	31,540,657	32,486,877	33,461,483
Operating Expenses							
Payroll	1,179,374	1,837,426	1,892,549	1,949,325	2,007,805	2,068,039	2,130,080
Marketing	266,556	415,286	427,744	440,577	453,794	467,408	481,430
General & Administrative	207,149	322,732	332,414	342,386	352,658	363,237	374,134
Turnover	139,915	217,982	224,522	231,257	238,195	245,341	252,701
Repairs & Maintenance	228,855	356,548	367,245	378,262	389,610	401,298	413,337
Contract Services	613,615	955,993	984,672	1,014,213	1,044,639	1,075,978	1,108,257
Utilities	1,028,295	1,602,050	1,650,111	1,699,615	1,750,603	1,803,121	1,857,215
Total Controllable Expenses	3,663,759	5,708,016	5,879,257	6,055,635	6,237,304	6,424,423	6,617,155
Management Fee	324,219	505,123	520,277	535,885	551,961	568,520	585,576
Insurance	339,508	528,943	544,811	561,156	577,990	595,330	613,190
Real Estate Taxes	0	0	0	0	0	0	0
Direct Assessments	348,655	469,243	478,628	488,201	497,965	507,924	518,083
Total Fixed Expenses	1,012,382	1,503,309	1,543,716	1,585,241	1,627,916	1,671,774	1,716,848
Total Operating Expenses	4,676,141	7,211,326	7,422,973	7,640,876	7,865,220	8,096,197	8,334,004
NET OPERATING INCOME	13,850,671	21,652,843	22,307,121	22,981,121	23,675,437	24,390,679	25,127,479

Prepared by Waterford Residential

Table 5B
Modified Residential Net Operating Income Projection for Turing Apartments, Assuming 2% Annual Rent Increases
Milpitas, CA

Assumptions																
Asset	Turing															
County	SANTA CLARA															
Total Units	371															
Total SF	349,349															
AMI	% Target															
80%	33%															
100%	33%															
120%	33%															
100%																
		120% rents = 1.2*100% rents														
		Max Allowable Rent						Pro Forma Rent								
Unit Type	Type	Total Units	SF	Market Rent	80% AMI	100% AMI	120% AMI	Units	80% AMI	Units	100% AMI	Units	120% AMI	Units	Average Rent	% Discount to In Place
0 BR	Market	19	563	\$2,278	\$2,707	\$3,383	\$4,060	6	\$2,004	6	\$2,050	6.3	\$2,096	19	\$2,050	10.00%
1 BR	Market	193	778	\$2,923	\$3,094	\$3,868	\$4,641	64	\$2,572	64	\$2,631	64.3	\$2,689	193	\$2,631	10.00%
2 BR	Market	150	1,157	\$3,427	\$3,481	\$4,352	\$5,222	50	\$3,015	50	\$3,084	50.0	\$3,152	150	\$3,084	10.00%
3 BR	Market	9	1,667	\$5,327	\$3,866	\$4,833	\$5,800	3	\$3,866	3	\$4,794	3.0	\$4,900	9	\$4,520	15.14%
		371	942	\$3,152	\$3,250	\$4,062	\$4,874	124	\$2,754	124	\$2,837	124	\$2,900	371	\$2,830	10.21%

Table 5B
Modified Residential Net Operating Income Projection for Turing Apartments, Assuming 2% Annual Rent Increases
Milpitas, CA

Assumptions	
Asset	Turing
County	SANTA CLARA
Total Units	371
Total SF	349,349

AMI	% Target
80%	33%
100%	33%
120%	33%
	100%

Growth Rates									
Turnover	0.00%	20.00%	40.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Converted Unit Rent	0.00%	0.00%	1.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Non-Converted Unit Rent	0.00%	0.00%	1.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Other Income	0.00%	0.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Expenses	0.00%	0.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
KMA: LOSS TO LEASE	0.00%	0.00%	0.75%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%
Utilities	0.00%	0.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Taxes	0.00%	0.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Vacancy	8.00%	8.00%	6.50%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
COVID 19 Concessions	1.50%	1.50%	0.75%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COVID 19 Bad Debt	1.50%	1.50%	0.75%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%

Year	0	1	2	3	4	5	6	7	8
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Revenue

% AMI Tarf 80%									
Converted Units	0	25	64	124	124	124	124	124	124
Non-Converted Units	124	99	59	0	0	0	0	0	0
Converted Unit Rent	\$2,754	\$2,754	\$2,781	\$2,837	\$2,894	\$2,951	\$3,011	\$3,071	\$3,132
Non-Converted Unit Rent	\$3,152	\$3,152	\$3,183	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585

% AMI Tarf 100%									
Converted Units	0	25	64	124	124	124	124	124	124
Non-Converted Units	124	99	59	0	0	0	0	0	0
Converted Unit Rent	\$2,837	\$2,837	\$2,865	\$2,922	\$2,981	\$3,040	\$3,101	\$3,163	\$3,226
Non-Converted Unit Rent	\$3,152	\$3,152	\$3,183	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585

% AMI Tarf 120%									
Converted Units	0	25	64	124	124	124	124	124	124
Non-Converted Units	124	99	59	0	0	0	0	0	0
Converted Unit Rent	\$2,900	\$2,900	\$2,929	\$2,987	\$3,047	\$3,108	\$3,170	\$3,234	\$3,298
Non-Converted Unit Rent	\$3,152	\$3,152	\$3,183	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585

Gross Potential Rent	\$14,032,048	\$13,745,495	\$13,419,881	\$12,979,782	\$13,239,378	\$13,504,166	\$13,774,249	\$14,049,734	\$14,330,729
LTL	0	0	(100,649)	(194,697)	(198,591)	(202,562)	(206,614)	(210,746)	(214,961)
Gross Scheduled Rent	14,032,048	13,745,495	13,319,232	12,785,086	13,040,787	13,301,603	13,567,635	13,838,988	14,115,768
Vacancy	(1,122,564)	(1,099,640)	(865,750)	(639,254)	(652,039)	(665,080)	(678,382)	(691,949)	(705,788)
COVID 19 Concessions	(210,481)	(206,182)	(99,894)	0	0	0	0	0	0
Bad Debt	(210,481)	(206,182)	(99,894)	(63,925)	(65,204)	(66,508)	(67,838)	(69,195)	(70,579)
Non-Revenue Units	(132,178)	(132,178)	(133,500)	(136,170)	(138,893)	(141,671)	(144,504)	(147,395)	(150,342)
Effective Rental Income	12,356,345	12,101,313	12,120,194	11,945,736	12,184,651	12,428,344	12,676,911	12,930,449	13,189,058
Other Income	311,854	311,854	321,210	330,846	340,771	350,994	361,524	372,370	383,541
RUBS	509,868	509,868	525,164	540,919	557,147	573,861	591,077	608,809	627,073
Total Other Income	821,722	821,722	846,374	871,765	897,918	924,855	952,601	981,179	1,010,614
Effective Gross Income	13,178,067	12,923,035	12,966,567	12,817,501	13,082,569	13,353,199	13,629,512	13,911,628	14,199,672

Operating Expenses

Payroll	779,705	779,705	803,096	827,189	852,005	877,565	903,892	931,009	958,939
Marketing	176,225	176,225	181,512	186,957	192,566	198,343	204,293	210,422	216,735
General & Administrative	136,950	136,950	141,059	145,290	149,649	154,138	158,763	163,525	168,431
Turnover	92,500	92,500	95,275	98,133	101,077	104,110	107,233	110,450	113,763
Repairs & Maintenance	151,300	151,300	155,839	160,514	165,330	170,289	175,398	180,660	186,080
Contract Services	405,672	405,672	417,842	430,377	443,289	456,587	470,285	484,394	498,925
Utilities	679,824	679,824	700,219	721,225	742,862	765,148	788,102	811,745	836,098
Total Controllable Expens	2,422,176	2,422,176	2,494,841	2,569,687	2,646,777	2,726,180	2,807,966	2,892,205	2,978,971
Manageml.75% of EGI	230,616	226,153	226,915	224,306	228,945	233,681	238,516	243,453	248,494
Insurance	224,455	224,455	231,189	238,124	245,268	252,626	260,205	268,011	276,051
Direct Assessments	264,237	264,237	269,521	274,912	280,410	286,018	291,739	297,573	303,525
Total Fixed Expenses	719,308	714,845	727,625	737,342	754,623	772,325	790,460	809,038	828,071
Total Operating Expenses	3,141,484	3,137,021	3,222,466	3,307,029	3,401,400	3,498,506	3,598,426	3,701,243	3,807,041
	10,036,583	9,786,014	9,744,101	9,510,472	9,681,168	9,854,693	10,031,086	10,210,385	10,392,631

Source: Waterford Residential

Table 5B
Modified Residential Net Operating Income Projection for Turing Apartments, Assuming 2% Annual Rent Increases
Milpitas, CA

Assumptions	
Asset	Turing
County	SANTA CLAR
Total Units	371
Total SF	349,349

AMI	% Target
80%	33%
100%	33%
120%	33%
100%	

Growth Rates										
Turnover	100.00%	100.00%	100.00%	100.00%	100.00%	####	100.00%	100.00%	100.00%	100.00%
Converted Unit Rent	2.00%	2.00%	2.00%	2.00%	2.00%	####	2.00%	2.00%	2.00%	2.00%
Non-Converted Unit Rent	2.00%	2.00%	2.00%	2.00%	2.00%	####	2.00%	2.00%	2.00%	2.00%
Other Income	3.00%	3.00%	3.00%	3.00%	3.00%	####	3.00%	3.00%	3.00%	3.00%
Expenses	3.00%	3.00%	3.00%	3.00%	3.00%	####	3.00%	3.00%	3.00%	3.00%
KMA: LOSS TO LEASE	1.50%	1.50%	1.50%	1.50%	1.50%	####	1.50%	1.50%	1.50%	1.50%
Utilities	3.00%	3.00%	3.00%	3.00%	3.00%	####	3.00%	3.00%	3.00%	3.00%
Taxes	2.00%	2.00%	2.00%	2.00%	2.00%	####	2.00%	2.00%	2.00%	2.00%
Vacancy	5.00%	5.00%	5.00%	5.00%	5.00%	#####	5.00%	5.00%	5.00%	5.00%
COVID 19 Concessions	0.00%	0.00%	0.00%	0.00%	0.00%	####	0.00%	0.00%	0.00%	0.00%
COVID 19 Bad Debt	0.50%	0.50%	0.50%	0.50%	0.50%	####	0.50%	0.50%	0.50%	0.50%
Year	9	10	11	12	13	14	15	16	17	18

Revenue

% AMI Tarf 80%										
Converted Units	124	124	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0	0	0
Converted Unit Rent	\$3,195	\$3,259	\$3,324	\$3,390	\$3,458	\$3,527	\$3,598	\$3,670	\$3,743	\$3,818
Non-Converted Unit Rent	\$3,657	\$3,730	\$3,804	\$3,881	\$3,958	\$4,037	\$4,118	\$4,200	\$4,284	\$4,370

% AMI Tarf 100%										
Converted Units	124	124	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0	0	0
Converted Unit Rent	\$3,291	\$3,357	\$3,424	\$3,492	\$3,562	\$3,634	\$3,706	\$3,780	\$3,856	\$3,933
Non-Converted Unit Rent	\$3,657	\$3,730	\$3,804	\$3,881	\$3,958	\$4,037	\$4,118	\$4,200	\$4,284	\$4,370

% AMI Tarf 120%										
Converted Units	124	124	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0	0	0
Converted Unit Rent	\$3,364	\$3,431	\$3,500	\$3,570	\$3,641	\$3,714	\$3,789	\$3,864	\$3,942	\$4,020
Non-Converted Unit Rent	\$3,657	\$3,730	\$3,804	\$3,881	\$3,958	\$4,037	\$4,118	\$4,200	\$4,284	\$4,370

Gross Potential Rent	\$14,617,343	\$14,909,690	\$15,207,884	\$15,512,041	\$15,822,282	#####	\$16,461,502	\$16,790,733	\$17,126,547	\$17,469,078
LTL	(219,260)	(223,645)	(228,118)	(232,681)	(237,334)	####	(246,923)	(251,861)	(256,898)	(262,036)
Gross Scheduled Rent	14,398,083	14,686,045	14,979,766	15,279,361	15,584,948	####	16,214,580	16,538,872	16,869,649	17,207,042
Vacancy	(719,904)	(734,302)	(748,988)	(763,968)	(779,247)	####	(810,729)	(826,944)	(843,482)	(860,352)
COVID 19 Concessions	0	0	0	0	0	0	0	0	0	0
Bad Debt	(71,990)	(73,430)	(74,899)	(76,397)	(77,925)	####	(81,073)	(82,694)	(84,348)	(86,035)
Non-Revenue Units	(153,349)	(156,416)	(159,545)	(162,735)	(165,990)	####	(172,696)	(176,150)	(179,673)	(183,267)
Effective Rental Income	13,452,839	13,721,896	13,996,334	14,276,260	14,561,786	#####	15,150,082	15,453,083	15,762,145	16,077,388
Other Income	395,047	406,899	419,106	431,679	444,629	####	471,707	485,858	500,434	515,447
RUBS	645,886	665,262	685,220	705,777	726,950	####	771,221	794,358	818,188	842,734
Total Other Income	1,040,933	1,072,161	1,104,326	1,137,455	1,171,579	#####	1,242,928	1,280,216	1,318,623	1,358,181
Effective Gross Income	14,493,772	14,794,057	15,100,659	15,413,716	15,733,365	#####	16,393,010	16,733,300	17,080,768	17,435,569

Operating Expenses

Payroll	987,707	1,017,338	1,047,858	1,079,294	1,111,673	####	1,179,374	1,214,755	1,251,198	1,288,734
Marketing	223,237	229,934	236,832	243,937	251,255	####	266,556	274,553	282,789	291,273
General & Administrative	173,484	178,689	184,049	189,571	195,258	####	207,149	213,364	219,765	226,357
Turnover	117,176	120,692	124,312	128,042	131,883	####	139,915	144,112	148,435	152,888
Repairs & Maintenance	191,662	197,412	203,335	209,435	215,718	####	228,855	235,720	242,792	250,076
Contract Services	513,893	529,310	545,189	561,545	578,391	####	613,615	632,024	650,984	670,514
Utilities	861,181	887,016	913,627	941,035	969,266	####	1,028,295	1,059,144	1,090,918	1,123,645
Total Controllable Expens	3,068,340	3,160,390	3,255,202	3,352,858	3,453,444	#####	3,663,759	3,773,671	3,886,881	4,003,488
Manageml.75% of EGI	253,641	258,896	264,262	269,740	275,334	####	286,878	292,833	298,913	305,122
Insurance	284,333	292,863	301,649	310,698	320,019	####	339,508	349,694	360,184	370,990
Direct Assessments	309,595	315,787	322,103	328,545	335,116	####	348,655	355,628	362,740	369,995
Total Fixed Expenses	847,569	867,546	888,013	908,983	930,469	#####	975,041	998,154	1,021,838	1,046,108
Total Operating Expenses	3,915,909	4,027,936	4,143,215	4,261,841	4,383,913	#####	4,638,799	4,771,825	4,908,720	5,049,595
	10,577,863	10,766,120	10,957,444	11,151,874	11,349,452	#####	11,754,211	11,961,474	12,172,048	12,385,974

Source: Waterford Reside

Table 5B
Modified Residential Net Operating Income Projection for Turing Apartments, Assuming 2% Annual Rent Increases
Milpitas, CA

Assumptions	
Asset	Turing
County	SANTA CLAR
Total Units	371
Total SF	349,349

AMI	% Target
80%	33%
100%	33%
120%	33%
	100%

Growth Rates									
Turnover	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Converted Unit Rent	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Non-Converted Unit Rent	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Other Income	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Expenses	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
KMA: LOSS TO LEASE	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%
Utilities	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Taxes	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Vacancy	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
COVID 19 Concessions	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COVID 19 Bad Debt	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%

Year	19	20	21	22	23	24	25	26	27
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Revenue

% AMI Tarf 80%

Converted Units	124	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0	0
Converted Unit Rent	\$3,894	\$3,972	\$4,052	\$4,133	\$4,215	\$4,300	\$4,386	\$4,473	\$4,563
Non-Converted Unit Rent	\$4,457	\$4,547	\$4,638	\$4,730	\$4,825	\$4,921	\$5,020	\$5,120	\$5,223

% AMI Tarf 100%

Converted Units	124	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0	0
Converted Unit Rent	\$4,012	\$4,092	\$4,174	\$4,257	\$4,342	\$4,429	\$4,518	\$4,608	\$4,700
Non-Converted Unit Rent	\$4,457	\$4,547	\$4,638	\$4,730	\$4,825	\$4,921	\$5,020	\$5,120	\$5,223

% AMI Tarf 120%

Converted Units	124	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0	0
Converted Unit Rent	\$4,101	\$4,183	\$4,267	\$4,352	\$4,439	\$4,528	\$4,618	\$4,711	\$4,805
Non-Converted Unit Rent	\$4,457	\$4,547	\$4,638	\$4,730	\$4,825	\$4,921	\$5,020	\$5,120	\$5,223

Gross Potential Rent	\$17,818,460	\$18,174,829	\$18,538,325	\$18,909,092	\$19,287,274	\$19,673,019	\$20,066,480	\$20,467,809	\$20,877,165
LTL	(267,277)	(272,622)	(278,075)	(283,636)	(289,309)	(295,095)	(300,997)	(307,017)	(313,157)
Gross Scheduled Rent	17,551,183	17,902,206	18,260,251	18,625,456	18,997,965	19,377,924	19,765,482	20,160,792	20,564,008
Vacancy	(877,559)	(895,110)	(913,013)	(931,273)	(949,898)	(968,896)	(988,274)	(1,008,040)	(1,028,200)
COVID 19 Concessions	0	0	0	0	0	0	0	0	0
Bad Debt	(87,756)	(89,511)	(91,301)	(93,127)	(94,990)	(96,890)	(98,827)	(100,804)	(102,820)
Non-Revenue Units	(186,932)	(190,671)	(194,484)	(198,374)	(202,341)	(206,388)	(210,516)	(214,726)	(219,021)
Effective Rental Income	16,398,936	16,726,915	17,061,453	17,402,682	17,750,736	18,105,750	18,467,865	18,837,223	19,213,967
Other Income	530,911	546,838	563,243	580,140	597,545	615,471	633,935	652,953	672,542
RUBS	868,016	894,057	920,878	948,505	976,960	1,006,269	1,036,457	1,067,550	1,099,577
Total Other Income	1,398,927	1,440,895	1,484,121	1,528,645	1,574,504	1,621,739	1,670,392	1,720,503	1,772,118
Effective Gross Income	17,797,863	18,167,809	18,545,574	18,931,327	19,325,240	19,727,490	20,138,257	20,557,726	20,986,085

Operating Expenses

Payroll	1,327,396	1,367,217	1,408,234	1,450,481	1,493,995	1,538,815	1,584,980	1,632,529	1,681,505
Marketing	300,011	309,012	318,282	327,830	337,665	347,795	358,229	368,976	380,045
General & Administrative	233,148	240,143	247,347	254,767	262,410	270,283	278,391	286,743	295,345
Turnover	157,475	162,199	167,065	172,077	177,240	182,557	188,033	193,674	199,485
Repairs & Maintenance	257,578	265,305	273,265	281,463	289,906	298,604	307,562	316,789	326,292
Contract Services	690,629	711,348	732,689	754,669	777,310	800,629	824,648	849,387	874,869
Utilities	1,157,355	1,192,075	1,227,838	1,264,673	1,302,613	1,341,691	1,381,942	1,423,400	1,466,103
Total Controllable Expens	4,123,593	4,247,300	4,374,719	4,505,961	4,641,140	4,780,374	4,923,785	5,071,499	5,223,644
Manageml.75% of EGI	311,463	317,937	324,548	331,298	338,192	345,231	352,419	359,760	367,256
Insurance	382,120	393,583	405,391	417,552	430,079	442,981	456,271	469,959	484,058
Direct Assessments	377,395	384,943	392,642	400,495	408,505	416,675	425,008	433,508	442,178
Total Fixed Expenses	1,070,977	1,096,463	1,122,580	1,149,345	1,176,775	1,204,887	1,233,698	1,263,227	1,293,493
Total Operating Expenses	5,194,570	5,343,763	5,497,299	5,655,306	5,817,915	5,985,261	6,157,484	6,334,726	6,517,136
	12,603,293	12,824,046	13,048,275	13,276,021	13,507,325	13,742,229	13,980,773	14,223,000	14,468,949

Source: Waterford Reside

Table 5B
Modified Residential Net Operating Income Projection for Turing Apartments, Assuming 2% Annual Rent Increases
Milpitas, CA

Assumptions	
Asset	Turing
County	SANTA CLAR
Total Units	371
Total SF	349,349

AMI	% Target
80%	33%
100%	33%
120%	33%
100%	

Growth Rates								
Turnover	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Converted Unit Rent	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Non-Converted Unit Rent	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Other Income	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Expenses	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
KMA: LOSS TO LEASE	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%
Utilities	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Taxes	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Vacancy	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
COVID 19 Concessions	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COVID 19 Bad Debt	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%	0.50%
Year	28	29	30	31	32	33	34	35

Revenue

% AMI Tar 80%

Converted Units	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0
Converted Unit Rent	\$4,654	\$4,747	\$4,842	\$4,939	\$5,038	\$5,139	\$5,241	\$5,346
Non-Converted Unit Rent	\$5,327	\$5,434	\$5,542	\$5,653	\$5,766	\$5,882	\$5,999	\$6,119

% AMI Tar 100%

Converted Units	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0
Converted Unit Rent	\$4,794	\$4,890	\$4,988	\$5,088	\$5,190	\$5,293	\$5,399	\$5,507
Non-Converted Unit Rent	\$5,327	\$5,434	\$5,542	\$5,653	\$5,766	\$5,882	\$5,999	\$6,119

% AMI Tar 120%

Converted Units	124	124	124	124	124	124	124	124
Non-Converted Units	0	0	0	0	0	0	0	0
Converted Unit Rent	\$4,901	\$4,999	\$5,099	\$5,201	\$5,305	\$5,411	\$5,519	\$5,630
Non-Converted Unit Rent	\$5,327	\$5,434	\$5,542	\$5,653	\$5,766	\$5,882	\$5,999	\$6,119

Gross Potential Rent	\$21,294,709	\$21,720,603	\$22,155,015	\$22,598,115	\$23,050,078	\$23,511,079	\$23,981,301	\$24,460,927
LTL	(319,421)	(325,809)	(332,325)	(338,972)	(345,751)	(352,666)	(359,720)	(366,914)
Gross Scheduled Rent	20,975,288	21,394,794	21,822,690	22,259,144	22,704,326	23,158,413	23,621,581	24,094,013
Vacancy	(1,048,764)	(1,069,740)	(1,091,134)	(1,112,957)	(1,135,216)	(1,157,921)	(1,181,079)	(1,204,701)
COVID 19 Concessions	0	0	0	0	0	0	0	0
Bad Debt	(104,876)	(106,974)	(109,113)	(111,296)	(113,522)	(115,792)	(118,108)	(120,470)
Non-Revenue Units	(223,401)	(227,869)	(232,426)	(237,075)	(241,816)	(246,653)	(251,586)	(256,617)
Effective Rental Income	19,598,246	19,990,211	20,390,015	20,797,816	21,213,772	21,638,048	22,070,808	22,512,225
Other Income	692,718	713,499	734,904	756,952	779,660	803,050	827,141	851,956
RUBS	1,132,564	1,166,541	1,201,537	1,237,583	1,274,711	1,312,952	1,352,341	1,392,911
Total Other Income	1,825,282	1,880,041	1,936,442	1,994,535	2,054,371	2,116,002	2,179,482	2,244,867
Effective Gross Income	21,423,528	21,870,252	22,326,457	22,792,351	23,268,143	23,754,050	24,250,291	24,757,091

Operating Expenses

Payroll	1,731,950	1,783,909	1,837,426	1,892,549	1,949,325	2,007,805	2,068,039	2,130,080
Marketing	391,447	403,190	415,286	427,744	440,577	453,794	467,408	481,430
General & Administrative	304,206	313,332	322,732	332,414	342,386	352,658	363,237	374,134
Turnover	205,469	211,633	217,982	224,522	231,257	238,195	245,341	252,701
Repairs & Maintenance	336,081	346,163	356,548	367,245	378,262	389,610	401,298	413,337
Contract Services	901,115	928,148	955,993	984,672	1,014,213	1,044,639	1,075,978	1,108,257
Utilities	1,510,086	1,555,388	1,602,050	1,650,111	1,699,615	1,750,603	1,803,121	1,857,215
Total Controllable Expens	5,380,353	5,541,764	5,708,016	5,879,257	6,055,635	6,237,304	6,424,423	6,617,155
Manageml.75% of EGI	374,912	382,729	390,713	398,866	407,193	415,696	424,380	433,249
Insurance	498,579	513,537	528,943	544,811	561,156	577,990	595,330	613,190
Direct Assessments	451,022	460,043	469,243	478,628	488,201	497,965	507,924	518,083
Total Fixed Expenses	1,324,513	1,356,309	1,388,899	1,422,306	1,456,549	1,491,651	1,527,634	1,564,521
Total Operating Expenses	6,704,866	6,898,072	7,096,916	7,301,562	7,512,183	7,728,955	7,952,057	8,181,677
	14,718,662	14,972,180	15,229,542	15,490,788	15,755,960	16,025,095	16,298,234	16,575,414

Source: Waterford Reside

Table 6A
Waterford Projection of Net Cash Flow after Debt, Assuming 3% Annual Rent Increases
City of Milpitas, CA

Bond Dates and Pricing		Sources				Series 2020B Bonds	
Face Coupon	3.80%	Principal	\$249,069,856	\$671,347	100.00%	Value %	
Price	\$106.87	Original Issuance Premium	\$17,104,762	\$46,104	6.87%	Principal	\$5,000,000
Bond Yield	3.00%	Total	\$266,174,617	\$717,452	106.87%	Interest	10%
Structure Covenants / Structure Inputs		Uses of Funds				Maturity Date	11/1/2055
Investment Earnings Long Term (Senior Debt Service	1.90%	Project Acq. Account	\$237,350,000	\$639,757	95.29%	Year	35
Investment Earnings short Term	1.05%	Capital Expense Fund	\$3,063,173	\$8,257	1.23%	Cover Redemption?	Yes
DSCR Requirement	1.10x	Capitalized Interest Account	\$0	\$0	0.00%		
Coverage Reserve Requirement	20.0%	Operating Reserve 25%	\$784,255	\$2,114	0.31%		
Coverage Reserve Fund Release	1.20x	Coverage Reserve	\$1,892,931	\$5,102	0.76%		
Project Administrator Fee	\$225,000	Senior Debt Service Reserve	\$9,464,655	\$25,511	3.80%		
Other Admin Expenses	\$225,000	Capitalized Admin Fees	\$2,250,000	\$6,065	0.90%		
Project Administrator Fee Year Start	Year 6	Extraordinary Expense	\$500,000	\$1,348	0.20%		
Project Administrator Fee Growth Rate	3%	Operating Account (under Property Mgmt)	\$448,326	\$1,208	0.18%		
Other Admin Expenses Year Start	Year 6	Initial Payment Project Admin.	\$3,000,000	\$8,086	1.20%		
Capital Reserves Per Unit	\$300	Costs of Issuance	\$7,421,278	\$20,003	2.98%		
Capital Reserves Inflation	3.00%	Total	\$266,174,617	\$717,452	106.87%		
Capital Reserves Fixed Amount	\$700						
Capital Reserves Fixed Amount Year Start	Year 10						

Table 6A
Waterford Projection of Net Cash Flow after Debt, Assuming 3% Annual Rent Increases
City of Milpitas, CA

Year	1	2	3	4	5	6
TOTAL NET REVENUES	\$9,786,014	\$9,803,052	\$9,684,209	\$9,977,485	\$10,279,614	\$10,590,862
Project Administrator Fee	\$0	\$0	\$0	\$0	\$0	\$268,662
Other Admin Expenses	\$0	\$0	\$0	\$0	\$0	\$225,000
Annual Project Admin Fee	\$20,000	\$20,600	\$21,218	\$21,855	\$22,510	\$23,185
Capital Reserves/Unit	\$300	\$309	\$318	\$328	\$338	\$348
Capital Reserves	\$111,300	\$114,639	\$118,078	\$121,621	\$125,269	\$129,027
Investment Earnings	(\$311,727)	(\$307,002)	(\$302,276)	(\$297,551)	(\$292,813)	(\$288,051)
Total Bond Specific Net Expenses	(\$180,127)	(\$171,454)	(\$162,662)	(\$153,748)	(\$144,696)	\$358,172
CF Avail for Debt Service	\$9,966,141	\$9,974,506	\$9,846,871	\$10,131,233	\$10,424,310	\$10,232,691
Series 2020A Bond Interest						
2020 A Bonds Interest	\$9,464,655	\$9,464,598	\$9,464,221	\$9,464,218	\$9,457,872	\$9,440,099
Series 2020A Bond Interest Coverage						
Year Covered	1	2	3	4	5	6
Series 2020B Bonds Interest						
Series 2020B Bonds Interest Total	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Excess CF For Series 2020B Bonds	\$501,487	\$509,908	\$382,650	\$667,015	\$966,438	\$792,592
Series 2020B Bonds Interest	\$500,000	\$500,000	\$382,650	\$500,000	\$500,000	\$500,000
Net Debt Service 2020A & 2020B	\$9,652,927	\$9,657,596	\$9,544,595	\$9,666,667	\$9,665,059	\$9,652,048
Coverage Reserve Fund Requirement						
Coverage Reserve Fund Requirement	1,892,931	1,892,920	1,892,844	1,892,844	1,891,574	1,888,020
Coverage Reserve Fund Balance Beg	\$1,892,931	\$1,892,931	\$1,892,920	\$1,892,844	\$1,892,844	\$1,891,574
Contribution / (Release)	\$0	(\$11)	(\$75)	(\$1)	(\$1,269)	(\$3,555)
Coverage Reserve Fund Balance End	\$1,892,931	\$1,892,920	\$1,892,844	\$1,892,844	\$1,891,574	\$1,888,020
DSCR Calculations						
DSCR - Total Revenues (No Coverage Reserve)	1.014	1.015	1.015	1.032	1.064	1.097
Compliance DSCR - Total Revenues	1.210	1.211	1.213	1.228	1.259	1.293
DSCR - Total CFAFDS	1.229	1.229	1.230	1.244	1.274	1.256
Bonds Outstanding						
Senior Debt Service Reserve Fund Balance Beg	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0
Senior Debt Service Fund Balance End	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Total Reserve Funds (Contribution) / Release	\$0	\$11	\$75	\$1	\$1,269	\$3,555
CF available for DS after reserve fund contr/release	\$9,966,141	\$9,974,517	\$9,846,947	\$10,131,234	\$10,425,579	\$10,236,245
CF Avail for Bond Redemption	\$1,487	\$9,919	\$75	\$167,016	\$467,707	\$296,146
Capitalized Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption 2020A	\$1,487	\$9,919	\$75	\$167,016	\$467,707	\$296,146
Bonds Outstanding 2020A	\$249,068,369	\$249,058,450	\$249,058,375	\$248,891,359	\$248,423,652	\$248,127,506
CF Available for Series 2020B Bonds Redemption	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest	\$0	\$0	\$117,350	\$0	\$0	\$0
Special Redemption Series 2020B	\$0	\$0	\$0	\$0	\$0	\$0
Series 2020B Bonds Outstanding	\$5,000,000	\$5,000,000	\$5,117,350	\$5,117,350	\$5,117,350	\$5,117,350
Total Bonds Outstanding	\$254,068,369	\$254,058,450	\$254,175,724	\$254,008,709	\$253,541,002	\$253,244,855
Cash DSCR	1.000	1.000	1.000	1.000	1.000	1.000

Prepared by Waterford Residential.

Table 6A
Waterford Projection of Net Cash Flow after Debt, Assuming 3% Annual Rent Increases
City of Milpitas, CA

Year	7	8	9	10	11	12
TOTAL NET REVENUES	\$10,911,505	\$11,241,826	\$11,582,116	\$11,932,676	\$12,293,814	\$12,665,849
Project Administrator Fee	\$276,722	\$285,023	\$293,574	\$302,381	\$311,453	\$320,796
Other Admin Expenses	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000
Annual Project Admin Fee	\$23,881	\$24,597	\$25,335	\$26,095	\$26,878	\$27,685
Capital Reserves/Unit	\$358	\$369	\$380	\$700	\$700	\$700
Capital Reserves	\$132,898	\$136,885	\$140,992	\$259,700	\$259,700	\$259,700
Investment Earnings	(\$288,027)	(\$287,978)	(\$268,226)	(\$268,226)	(\$168,652)	(\$168,652)
Total Bond Specific Net Expenses	\$370,832	\$383,897	\$417,054	\$545,650	\$655,079	\$665,229
CF Avail for Debt Service	\$10,540,673	\$10,857,930	\$11,165,062	\$11,387,026	\$11,638,735	\$12,000,620
Series 2020A Bond Interest						
2020 A Bonds Interest	\$9,428,845	\$9,405,510	\$9,369,141	\$9,248,414	\$9,186,147	\$9,111,948
Series 2020A Bond Interest Coverage						
Year Covered	7	8	9	10	11	12
Series 2020B Bonds Interest						
Series 2020B Bonds Interest Total	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Excess CF For Series 2020B Bonds	\$1,111,828	\$1,452,419	\$1,795,921	\$2,138,611	\$2,452,588	\$2,888,672
Series 2020B Bonds Interest	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Net Debt Service 2020A & 2020B	\$9,640,818	\$9,617,532	\$9,600,914	\$9,480,188	\$9,517,495	\$9,443,297
Coverage Reserve Fund Requirement						
Coverage Reserve Fund Requirement	1,885,769	1,881,102	0	0	0	0
Coverage Reserve Fund Balance Beg	\$1,888,020	\$1,885,769	\$1,881,102	\$0	\$0	\$0
Contribution / (Release)	(\$2,251)	(\$4,667)	(\$1,881,102)	\$0	\$0	\$0
Coverage Reserve Fund Balance End	\$1,885,769	\$1,881,102	\$0	\$0	\$0	\$0
DSCR Calculations						
DSCR - Total Revenues (No Coverage Reserve)	1.132	1.169	1.206	1.259	1.292	1.341
Compliance DSCR - Total Revenues	1.327	1.364	1.206	1.259	1.292	1.341
DSCR - Total CFAFDS	1.289	1.325	1.163	1.201	1.223	1.271
Bonds Outstanding						
Senior Debt Service Reserve Fund Balance Beg	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0
Senior Debt Service Fund Balance End	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Total Reserve Funds (Contribution) / Release	\$2,251	\$4,667	\$1,881,102	\$0	\$0	\$0
CF available for DS after reserve fund contr/release	\$10,542,924	\$10,862,597	\$13,046,164	\$11,387,026	\$11,638,735	\$12,000,620
CF Avail for Bond Redemption	\$614,079	\$957,086	\$3,177,023	\$1,638,611	\$1,952,588	\$2,388,672
Capitalized Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption 2020A	\$614,079	\$957,086	\$3,177,023	\$1,638,611	\$1,952,588	\$2,388,672
Bonds Outstanding 2020A	\$247,513,427	\$246,556,340	\$243,379,317	\$241,740,706	\$239,788,118	\$237,399,446
CF Available for Series 2020B Bonds Redemption	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption Series 2020B	\$0	\$0	\$0	\$0	\$0	\$0
Series 2020B Bonds Outstanding	\$5,117,350	\$5,117,350	\$5,117,350	\$5,117,350	\$5,117,350	\$5,117,350
Total Bonds Outstanding	\$252,630,776	\$251,673,690	\$248,496,667	\$246,858,056	\$244,905,468	\$242,516,796
Cash DSCR	1.000	1.000	1.000	1.000	1.000	1.000

Prepared by Waterford Residential.

Table 6A
Waterford Projection of Net Cash Flow after Debt, Assuming 3% Annual Rent Increases
City of Milpitas, CA

Year	15	30	31	32	33	34	35
TOTAL NET REVENUES	\$13,850,671	\$21,652,843	\$22,307,121	\$22,981,121	\$23,675,437	\$24,390,679	\$25,127,479
Project Administrator Fee	\$350,543	\$546,134	\$562,518	\$579,394	\$596,775	\$614,679	\$633,119
Other Admin Expenses	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000
Annual Project Admin Fee	\$30,252	\$47,131	\$48,545	\$50,002	\$51,502	\$53,047	\$54,638
Capital Reserves/Unit	\$700	\$700	\$700	\$700	\$700	\$700	\$700
Capital Reserves	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700
Investment Earnings	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)	(\$45,648)	(\$45,648)
Total Bond Specific Net Expenses	\$697,543	\$910,013	\$927,811	\$946,143	\$965,025	\$1,107,477	\$1,127,509
CF Avail for Debt Service	\$13,153,128	\$20,742,830	\$21,379,310	\$22,034,978	\$22,710,411	\$23,283,202	\$23,999,970
Series 2020A Bond Interest							
2020 A Bonds Interest	\$8,785,695	\$3,697,672	\$3,068,956	\$2,392,163	\$1,664,736	\$884,000	\$0
Series 2020A Bond Interest Coverage							
Year Covered	15	30	31	32	33	34	35
Series 2020B Bonds Interest							
Series 2020B Bonds Interest Total	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Excess CF For Series 2020B Bonds	\$4,367,433	\$17,045,158	\$18,310,354	\$19,642,815	\$21,045,676	\$22,399,202	\$23,999,970
Series 2020B Bonds Interest	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$0	\$0
Net Debt Service 2020A & 2020B	\$9,117,043	\$4,029,020	\$3,400,304	\$2,723,511	\$1,996,084	\$838,352	(\$45,648)
Coverage Reserve Fund Requirement							
Coverage Reserve Fund Requirement	0	0	0	0	0	0	0
Coverage Reserve Fund Balance Beg	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Coverage Reserve Fund Balance End	\$0	\$0	\$0	\$0	\$0	\$0	\$0
DSCR Calculations							
DSCR - Total Revenues (No Coverage Reserve)	1.519	5.374	6.560	8.438	11.861	29.094	(550.462)
Compliance DSCR - Total Revenues	1.519	5.374	6.560	8.438	11.861	29.094	(550.462)
DSCR - Total CFAFDS	1.443	5.148	6.287	8.091	11.377	27.773	(525.762)
Bonds Outstanding							
Senior Debt Service Reserve Fund Balance Beg	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$0
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	(\$11,714,655)	\$0
Senior Debt Service Fund Balance End	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$0	\$0
Total Reserve Funds (Contribution) / Release	\$0	\$0	\$0	\$0	\$0	\$11,714,655	\$0
CF available for DS after reserve fund contr/release	\$13,153,128	\$20,742,830	\$21,379,310	\$22,034,978	\$22,710,411	\$34,997,857	\$23,999,970
CF Avail for Bond Redemption	\$3,867,433	\$16,545,158	\$17,810,354	\$19,142,815	\$20,545,676	\$34,113,857	\$23,999,970
Capitalized Interest	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption 2020A	\$3,867,433	\$16,545,158	\$17,810,354	\$19,142,815	\$20,545,676	\$23,263,157	\$0
Bonds Outstanding 2020A	\$227,335,075	\$80,762,001	\$62,951,648	\$43,808,833	\$23,263,157	\$0	\$0
CF Available for Series 2020B Bonds Redemption	\$0	\$0	\$0	\$0	\$0	\$10,850,700	\$23,999,970
Accrued Interest	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption Series 2020B	\$0	\$0	\$0	\$0	\$0	\$5,117,350	\$0
Series 2020B Bonds Outstanding	\$5,117,350	\$5,117,350	\$5,117,350	\$5,117,350	\$5,117,350	\$0	\$0
Total Bonds Outstanding	\$232,452,425	\$85,879,351	\$68,068,997	\$48,926,182	\$28,380,507	\$0	\$0
Cash DSCR	1.000	1.000	1.000	1.000	1.000	0.836	0.000

Prepared by Waterford Residential.

Table 6B
Modified Projection of Net Cash Flow after Deb, Assuming 2% Annual Rent Increases
Milpitas, CA

Bond Dates and Pricing	
Face Coupon	3.80%
Price	\$106.87
Bond Yield	3.00%

Structure Covenants / Structure Inputs	
Investment Earnings Long Term (Sr Debt Svc Rsrv Fund)	1.90%
Investment Earnings short Term	1.05%
DSCR Requirement	1.10x
Coverage Reserve Requirement	20.0%
Coverage Reserve Fund Release	1.20x
Project Administrator Fee	\$225,000
Other Admin Expenses	\$225,000
Project Administrator Fee Year Start	Year 6
Project Administrator Fee Growth Rate	3%
Other Admin Expenses Year Start	Year 6
Capital Reserves Per Unit	\$300
Capital Reserves Inflation	3.00%
Capital Reserves Fixed Amount	\$700
Capital Reserves Fixed Amount Year Start	Year 10

Sources	Total	Per Unit	%
Principal	\$249,069,856	\$671,347	100.00%
Original Issuance Premium	\$17,104,762	\$46,104	6.87%
Total	\$266,174,618	\$717,452	106.87%

Uses of Funds	Total	Per Unit	%
Project Acq. Account	\$237,350,000	\$639,757	95.29%
Capital Expense Fund	\$3,063,173	\$8,257	1.23%
Capitalized Interest Account	\$0	\$0	0.00%
Operating Reserve	\$784,255	\$2,114	0.31%
Coverage Reserve	\$1,892,931	\$5,102	0.76%
Senior Debt Service Reserve	\$9,464,655	\$25,511	3.80%
Capitalized Admin Fees	\$2,250,000	\$6,065	0.90%
Extraordinary Expense	\$500,000	\$1,348	0.20%
Operating Account (under Property Mgmt)	\$448,326	\$1,208	0.18%
Initial Payment Project Admin.	\$3,000,000	\$8,086	1.20%
Costs of Issuance	\$7,421,278	\$20,003	2.98%
Total	\$266,174,617	\$717,452	106.87%

Series 2020B Bonds	
Value %	
Principal	\$5,000,000
Interest	10%
Maturity Date	11/1/2055
Year	35
Cover Redemption?	Yes

Table 6B

Modified Projection of Net Cash Flow after Deb, Assuming 2% Annual Rent Increases

Milpitas, CA

Year	0	1	2	3	4	5
TOTAL NET REVENUES	\$10,036,583	\$9,786,014	\$9,744,101	\$9,510,472	\$9,681,168	\$9,854,693
Project Administrator Fee		\$0	\$0	\$0	\$0	\$0
Other Admin Expenses		\$0	\$0	\$0	\$0	\$0
Annual Project Admin Fee		\$20,000	\$20,600	\$21,218	\$21,855	\$22,510
Capital Reserves/Unit		\$300	\$309	\$318	\$328	\$338
Capital Reserves		\$111,300	\$114,639	\$118,078	\$121,621	\$125,269
Investment Earnings		(\$311,727)	(\$307,002)	(\$302,277)	(\$297,552)	(\$292,827)
Total Bond Specific Net Expenses		(\$180,127)	(\$171,454)	(\$162,663)	(\$153,749)	(\$144,710)
CF Avail for Debt Service		\$9,966,141	\$9,915,555	\$9,673,135	\$9,834,918	\$9,999,404
Series 2020A Bond Interest						
2020 A Bonds Interest		\$9,464,655	\$9,464,598	\$9,464,598	\$9,464,598	\$9,464,598
Net Debt Service 2020A		\$9,152,927	\$9,157,596	\$9,162,321	\$9,167,046	\$9,171,771
Series 2020A Bond Interest Coverage						
Year Covered		1	2	3	4	5
Series 2020B Bonds Interest						
Series 2020B Bonds Interest Total		\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Excess CF For Series 2020B Bonds		\$501,487	\$450,957	\$208,537	\$370,320	\$534,806
Series 2020B Bonds Interest	\$500,000	\$500,000	\$450,957	\$208,537	\$370,320	\$500,000
Net Debt Service 2020A & 2020B		\$9,652,927	\$9,608,553	\$9,370,858	\$9,537,366	\$9,671,771
Coverage Reserve Fund Requirement						
Coverage Reserve Fund Requirement		1,892,931	1,892,920	1,892,920	1,892,920	1,892,920
Coverage Reserve Fund Balance Beg		\$1,892,931	\$1,892,931	\$1,892,920	\$1,892,920	\$1,892,920
Contribution / (Release)		\$0	(\$11)	(\$0)	(\$0)	(\$0)
Coverage Reserve Fund Balance End		\$1,892,931	\$1,892,920	\$1,892,920	\$1,892,920	\$1,892,920
DSCR Calculations						
DSCR - Total Revenues (No Coverage Reserve)		1.014	1.014	1.015	1.015	1.019
Compliance DSCR - Total Revenues W/Coverage Reserve		1.210	1.211	1.217	1.214	1.215
DSCR - Total CFAFDS w/Coverage Reserve		1.229	1.229	1.234	1.230	1.230
Bonds Outstanding						
Senior Debt Service Reserve Fund Balance Beg		\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Contribution / (Release)		\$0	\$0	\$0	\$0	\$0
Senior Debt Service Fund Balance End		\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Total Reserve Funds (Contribution) / Release		\$0	\$11	\$0	\$0	\$0
CF available for DS after reserve fund contr/release		\$9,966,141	\$9,915,566	\$9,673,135	\$9,834,918	\$9,999,404
CF Avail for Bond Redemption		\$1,487	\$11	\$0	\$0	\$34,806
Capitalized Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption 2020A		\$1,487	\$11	\$0	\$0	\$34,806
Bonds Outstanding 2020A	\$249,069,856	\$249,068,369	\$249,068,358	\$249,068,358	\$249,068,358	\$249,033,552
CF Available for Series 2020B Bonds Redemption		\$0	\$0	\$0	\$0	\$0
Accrued Interest		\$0	\$49,043	\$291,463	\$129,680	\$0
Special Redemption Series 2020B		\$0	\$0	\$0	\$0	\$0
Series 2020B Bonds Outstanding	\$5,000,000	\$5,000,000	\$5,049,043	\$5,340,506	\$5,470,186	\$5,470,186
Total Bonds Outstanding		\$254,068,369	\$254,117,401	\$254,408,864	\$254,538,544	\$254,503,738
Cash DSCR		1.000	1.000	1.000	1.000	1.000

Source: Waterford Residential

Table 6B
Modified Projection of Net Cash Flow after Deb, Assuming 2% Annual Rent Increases
Milpitas, CA

Year	6	7	8	9	10	11
TOTAL NET REVENUES	\$10,031,086	\$10,210,385	\$10,392,631	\$10,577,863	\$10,766,120	\$10,957,444
Project Administrator Fee	\$268,662	\$276,722	\$285,023	\$293,574	\$302,381	\$311,453
Other Admin Expenses	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000
Annual Project Admin Fee	\$23,185	\$23,881	\$24,597	\$25,335	\$26,095	\$26,878
Capital Reserves/Unit	\$348	\$358	\$369	\$380	\$700	\$700
Capital Reserves	\$129,027	\$132,898	\$136,885	\$140,992	\$259,700	\$259,700
Investment Earnings	(\$288,099)	(\$288,099)	(\$288,099)	(\$288,096)	(\$288,078)	(\$188,481)
Total Bond Specific Net Expenses	\$358,123	\$370,760	\$383,775	\$397,185	\$525,799	\$635,250
CF Avail for Debt Service	\$9,672,963	\$9,839,626	\$10,008,855	\$10,180,677	\$10,240,322	\$10,322,194
Series 2020A Bond Interest						
2020 A Bonds Interest	\$9,463,275	\$9,463,265	\$9,463,265	\$9,461,532	\$9,453,192	\$9,442,217
Net Debt Service 2020A	\$9,175,176	\$9,175,166	\$9,175,166	\$9,173,437	\$9,165,114	\$9,253,737
Series 2020A Bond Interest Coverage						
Year Covered	6	7	8	9	10	11
Series 2020B Bonds Interest						
Series 2020B Bonds Interest Total	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Excess CF For Series 2020B Bonds	\$209,688	\$376,361	\$545,591	\$719,145	\$787,130	\$879,976
Series 2020B Bonds Interest	\$209,688	\$376,361	\$500,000	\$500,000	\$500,000	\$500,000
Net Debt Service 2020A & 2020B	\$9,384,864	\$9,551,526	\$9,675,166	\$9,673,437	\$9,665,114	\$9,753,737
Coverage Reserve Fund Requirement						
Coverage Reserve Fund Requirement	1,892,655	1,892,653	1,892,653	1,892,306	1,890,638	1,888,443
Coverage Reserve Fund Balance Beg	\$1,892,920	\$1,892,655	\$1,892,653	\$1,892,653	\$1,892,306	\$1,890,638
Contribution / (Release)	(\$265)	(\$2)	(\$0)	(\$346)	(\$1,668)	(\$2,195)
Coverage Reserve Fund Balance End	\$1,892,655	\$1,892,653	\$1,892,653	\$1,892,306	\$1,890,638	\$1,888,443
DSCR Calculations						
DSCR - Total Revenues (No Coverage Reserve)	1.069	1.069	1.074	1.093	1.114	1.123
Compliance DSCR - Total Revenues W/Coverage Res	1.271	1.267	1.270	1.289	1.310	1.317
DSCR - Total CFAFDS w/Coverage Reserve	1.232	1.228	1.230	1.248	1.255	1.252
Bonds Outstanding						
Senior Debt Service Reserve Fund Balance Beg	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0
Senior Debt Service Fund Balance End	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Total Reserve Funds (Contribution) / Release	\$265	\$2	\$0	\$346	\$1,668	\$2,195
CF available for DS after reserve fund contr/release	\$9,673,228	\$9,839,628	\$10,008,856	\$10,181,024	\$10,241,990	\$10,324,389
CF Avail for Bond Redemption	\$265	\$2	\$45,591	\$219,491	\$288,798	\$382,171
Capitalized Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption 2020A	\$265	\$2	\$45,591	\$219,491	\$288,798	\$382,171
Bonds Outstanding 2020A	\$249,033,287	\$249,033,285	\$248,987,695	\$248,768,203	\$248,479,405	\$248,097,234
CF Available for Series 2020B Bonds Redemption	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest	\$290,312	\$123,639	\$0	\$0	\$0	\$0
Special Redemption Series 2020B	\$0	\$0	\$0	\$0	\$0	\$0
Series 2020B Bonds Outstanding	\$5,760,498	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137
Total Bonds Outstanding	\$254,793,785	\$254,917,423	\$254,871,832	\$254,652,340	\$254,363,542	\$253,981,371
Cash DSCR	1.000	1.000	1.000	1.000	1.000	1.000

Source: Waterford Residential

Table 6B
Modified Projection of Net Cash Flow after Deb, Assuming 2% Annual Rent Increases
Milpitas, CA

Year	12	13	14	15	16	17
TOTAL NET REVENUES	\$11,151,874	\$11,349,452	\$11,550,217	\$11,754,211	\$11,961,474	\$12,172,048
Project Administrator Fee	\$320,796	\$330,420	\$340,333	\$350,543	\$361,059	\$371,891
Other Admin Expenses	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000
Annual Project Admin Fee	\$27,685	\$28,515	\$29,371	\$30,252	\$31,159	\$32,094
Capital Reserves/Unit	\$700	\$700	\$700	\$700	\$700	\$700
Capital Reserves	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700
Investment Earnings	(\$188,450)	(\$188,404)	(\$188,340)	(\$168,652)	(\$168,652)	(\$168,652)
Total Bond Specific Net Expenses	\$645,431	\$655,932	\$666,763	\$697,543	\$708,966	\$720,733
CF Avail for Debt Service	\$10,506,444	\$10,693,520	\$10,883,454	\$11,056,668	\$11,252,508	\$11,451,315
Series 2020A Bond Interest						
2020 A Bonds Interest	\$9,427,695	\$9,405,592	\$9,375,483	\$9,336,951	\$9,219,348	\$9,161,088
Net Debt Service 2020A	\$9,239,245	\$9,217,188	\$9,187,142	\$9,168,299	\$9,050,696	\$8,992,436
Series 2020A Bond Interest Coverage						
Year Covered	12	13	14	15	16	17
Series 2020B Bonds Interest						
Series 2020B Bonds Interest Total	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Excess CF For Series 2020B Bonds	\$1,078,749	\$1,287,928	\$1,507,971	\$1,719,717	\$2,033,160	\$2,290,227
Series 2020B Bonds Interest	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Net Debt Service 2020A & 2020B	\$9,739,245	\$9,717,188	\$9,687,142	\$9,668,299	\$9,550,696	\$9,492,436
Coverage Reserve Fund Requirement						
Coverage Reserve Fund Requirement	1,885,539	1,881,118	1,875,097	0	0	0
Coverage Reserve Fund Balance Beg	\$1,888,443	\$1,885,539	\$1,881,118	\$1,875,097	\$0	\$0
Contribution / (Release)	(\$2,905)	(\$4,421)	(\$6,022)	(\$1,875,097)	\$0	\$0
Coverage Reserve Fund Balance End	\$1,885,539	\$1,881,118	\$1,875,097	\$0	\$0	\$0
DSCR Calculations						
DSCR - Total Revenues (No Coverage Reserve)	1.145	1.168	1.192	1.216	1.252	1.282
Compliance DSCR - Total Revenues W/Coverage Res	1.339	1.362	1.386	1.216	1.252	1.282
DSCR - Total CFAFDS w/Coverage Reserve	1.272	1.294	1.317	1.144	1.178	1.206
Bonds Outstanding						
Senior Debt Service Reserve Fund Balance Beg	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0
Senior Debt Service Fund Balance End	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Total Reserve Funds (Contribution) / Release	\$2,905	\$4,421	\$6,022	\$1,875,097	\$0	\$0
CF available for DS after reserve fund contr/release	\$10,509,348	\$10,697,941	\$10,889,476	\$12,931,765	\$11,252,508	\$11,451,315
CF Avail for Bond Redemption	\$581,653	\$792,349	\$1,013,993	\$3,094,814	\$1,533,160	\$1,790,227
Capitalized Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption 2020A	\$581,653	\$792,349	\$1,013,993	\$3,094,814	\$1,533,160	\$1,790,227
Bonds Outstanding 2020A	\$247,515,581	\$246,723,232	\$245,709,239	\$242,614,425	\$241,081,266	\$239,291,039
CF Available for Series 2020B Bonds Redemption	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption Series 2020B	\$0	\$0	\$0	\$0	\$0	\$0
Series 2020B Bonds Outstanding	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137
Total Bonds Outstanding	\$253,399,718	\$252,607,369	\$251,593,376	\$248,498,562	\$246,965,403	\$245,175,176
Cash DSCR	1.000	1.000	1.000	1.000	1.000	1.000

Source: Waterford Residential

Table 6B
Modified Projection of Net Cash Flow after Deb, Assuming 2% Annual Rent Increases
Milpitas, CA

Year	18	19	20	21	22	23
TOTAL NET REVENUES	\$12,385,974	\$12,603,293	\$12,824,046	\$13,048,275	\$13,276,021	\$13,507,325
Project Administrator Fee	\$383,047	\$394,539	\$406,375	\$418,566	\$431,123	\$444,057
Other Admin Expenses	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000
Annual Project Admin Fee	\$33,057	\$34,049	\$35,070	\$36,122	\$37,206	\$38,322
Capital Reserves/Unit	\$700	\$700	\$700	\$700	\$700	\$700
Capital Reserves	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700
Investment Earnings	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)
Total Bond Specific Net Expenses	\$732,853	\$745,336	\$758,193	\$771,437	\$785,077	\$799,127
CF Avail for Debt Service	\$11,653,121	\$11,857,957	\$12,065,853	\$12,276,838	\$12,490,943	\$12,708,198
Series 2020A Bond Interest						
2020 A Bonds Interest	\$9,093,059	\$9,014,777	\$8,925,736	\$8,825,412	\$8,713,258	\$8,588,706
Net Debt Service 2020A	\$8,924,408	\$8,846,125	\$8,757,084	\$8,656,760	\$8,544,606	\$8,420,054
Series 2020A Bond Interest Coverage						
Year Covered	18	19	20	21	22	23
Series 2020B Bonds Interest						
Series 2020B Bonds Interest Total	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Excess CF For Series 2020B Bonds	\$2,560,062	\$2,843,180	\$3,140,116	\$3,451,426	\$3,777,686	\$4,119,492
Series 2020B Bonds Interest	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Net Debt Service 2020A & 2020B	\$9,424,408	\$9,346,125	\$9,257,084	\$9,156,760	\$9,044,606	\$8,920,054
Coverage Reserve Fund Requirement						
Coverage Reserve Fund Requirement	0	0	0	0	0	0
Coverage Reserve Fund Balance Beg	\$0	\$0	\$0	\$0	\$0	\$0
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0
Coverage Reserve Fund Balance End	\$0	\$0	\$0	\$0	\$0	\$0
DSCR Calculations						
DSCR - Total Revenues (No Coverage Reserve)	1.314	1.349	1.385	1.425	1.468	1.514
Compliance DSCR - Total Revenues W/Coverage Res	1.314	1.349	1.385	1.425	1.468	1.514
DSCR - Total CFAFDS w/Coverage Reserve	1.236	1.269	1.303	1.341	1.381	1.425
Bonds Outstanding						
Senior Debt Service Reserve Fund Balance Beg	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0
Senior Debt Service Fund Balance End	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Total Reserve Funds (Contribution) / Release	\$0	\$0	\$0	\$0	\$0	\$0
CF available for DS after reserve fund contr/release	\$11,653,121	\$11,857,957	\$12,065,853	\$12,276,838	\$12,490,943	\$12,708,198
CF Avail for Bond Redemption	\$2,060,062	\$2,343,180	\$2,640,116	\$2,951,426	\$3,277,686	\$3,619,492
Capitalized Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption 2020A	\$2,060,062	\$2,343,180	\$2,640,116	\$2,951,426	\$3,277,686	\$3,619,492
Bonds Outstanding 2020A	\$237,230,977	\$234,887,797	\$232,247,681	\$229,296,254	\$226,018,569	\$222,399,076
CF Available for Series 2020B Bonds Redemption	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption Series 2020B	\$0	\$0	\$0	\$0	\$0	\$0
Series 2020B Bonds Outstanding	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137
Total Bonds Outstanding	\$243,115,114	\$240,771,934	\$238,131,818	\$235,180,391	\$231,902,706	\$228,283,214
Cash DSCR	1.000	1.000	1.000	1.000	1.000	1.000

Source: Waterford Residential

Table 6B

Modified Projection of Net Cash Flow after Deb, Assuming 2% Annual Rent Increases

Milpitas, CA

Year	24	25	26	27	28	29
TOTAL NET REVENUES	\$13,742,229	\$13,980,773	\$14,223,000	\$14,468,949	\$14,718,662	\$14,972,180
Project Administrator Fee	\$457,379	\$471,100	\$485,233	\$499,790	\$514,784	\$530,227
Other Admin Expenses	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000
Annual Project Admin Fee	\$39,472	\$40,656	\$41,876	\$43,132	\$44,426	\$45,759
Capital Reserves/Unit	\$700	\$700	\$700	\$700	\$700	\$700
Capital Reserves	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700
Investment Earnings	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)
Total Bond Specific Net Expenses	\$813,599	\$828,504	\$843,857	\$859,670	\$875,958	\$892,734
CF Avail for Debt Service	\$12,928,630	\$13,152,269	\$13,379,143	\$13,609,279	\$13,842,705	\$14,079,446
Series 2020A Bond Interest						
2020 A Bonds Interest	\$8,451,165	\$8,300,021	\$8,134,636	\$7,954,345	\$7,758,457	\$7,546,256
Net Debt Service 2020A	\$8,282,513	\$8,131,369	\$7,965,984	\$7,785,693	\$7,589,805	\$7,377,604
Series 2020A Bond Interest Coverage						
Year Covered	24	25	26	27	28	29
Series 2020B Bonds Interest						
Series 2020B Bonds Interest Total	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Excess CF For Series 2020B Bonds	\$4,477,465	\$4,852,248	\$5,244,507	\$5,654,935	\$6,084,248	\$6,533,190
Series 2020B Bonds Interest	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Net Debt Service 2020A & 2020B	\$8,782,513	\$8,631,369	\$8,465,984	\$8,285,693	\$8,089,805	\$7,877,604
Coverage Reserve Fund Requirement						
Coverage Reserve Fund Requirement	0	0	0	0	0	0
Coverage Reserve Fund Balance Beg	\$0	\$0	\$0	\$0	\$0	\$0
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0
Coverage Reserve Fund Balance End	\$0	\$0	\$0	\$0	\$0	\$0
DSCR Calculations						
DSCR - Total Revenues (No Coverage Reserve)	1.565	1.620	1.680	1.746	1.819	1.901
Compliance DSCR - Total Revenues W/Coverage Res	1.565	1.620	1.680	1.746	1.819	1.901
DSCR - Total CFAFDS w/Coverage Reserve	1.472	1.524	1.580	1.643	1.711	1.787
Bonds Outstanding						
Senior Debt Service Reserve Fund Balance Beg	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0
Senior Debt Service Fund Balance End	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Total Reserve Funds (Contribution) / Release	\$0	\$0	\$0	\$0	\$0	\$0
CF available for DS after reserve fund contr/release	\$12,928,630	\$13,152,269	\$13,379,143	\$13,609,279	\$13,842,705	\$14,079,446
CF Avail for Bond Redemption	\$3,977,465	\$4,352,248	\$4,744,507	\$5,154,935	\$5,584,248	\$6,033,190
Capitalized Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption 2020A	\$3,977,465	\$4,352,248	\$4,744,507	\$5,154,935	\$5,584,248	\$6,033,190
Bonds Outstanding 2020A	\$218,421,611	\$214,069,363	\$209,324,856	\$204,169,921	\$198,585,674	\$192,552,484
CF Available for Series 2020B Bonds Redemption	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption Series 2020B	\$0	\$0	\$0	\$0	\$0	\$0
Series 2020B Bonds Outstanding	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137
Total Bonds Outstanding	\$224,305,748	\$219,953,500	\$215,208,993	\$210,054,058	\$204,469,811	\$198,436,621
Cash DSCR	1.000	1.000	1.000	1.000	1.000	1.000

Source: Waterford Residential

Table 6B

Modified Projection of Net Cash Flow after Deb, Assuming 2% Annual Rent Increases
Milpitas, CA

Year	30	31	32	33	34	35
TOTAL NET REVENUES	\$15,229,542	\$15,490,788	\$15,755,960	\$16,025,095	\$16,298,234	\$16,575,414
Project Administrator Fee	\$546,134	\$562,518	\$579,394	\$596,775	\$614,679	\$633,119
Other Admin Expenses	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000	\$225,000
Annual Project Admin Fee	\$47,131	\$48,545	\$50,002	\$51,502	\$53,047	\$54,638
Capital Reserves/Unit	\$700	\$700	\$700	\$700	\$700	\$700
Capital Reserves	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700	\$259,700
Investment Earnings	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)	(\$168,652)
Total Bond Specific Net Expenses	\$910,013	\$927,811	\$946,143	\$965,025	\$984,474	\$1,004,505
CF Avail for Debt Service	\$14,319,528	\$14,562,977	\$14,809,816	\$15,060,070	\$15,313,760	\$15,570,909
Series 2020A Bond Interest						
2020 A Bonds Interest	\$7,316,994	\$7,069,898	\$6,804,161	\$6,518,946	\$6,213,384	\$5,886,569
Net Debt Service 2020A	\$7,148,343	\$6,901,246	\$6,635,509	\$6,350,294	\$6,044,732	\$5,717,917
Series 2020A Bond Interest Coverage						
Year Covered	30	31	32	33	34	35
Series 2020B Bonds Interest						
Series 2020B Bonds Interest Total	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Excess CF For Series 2020B Bonds	\$7,002,534	\$7,493,079	\$8,005,655	\$8,541,124	\$9,100,377	\$9,684,340
Series 2020B Bonds Interest	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Net Debt Service 2020A & 2020B	\$7,648,343	\$7,401,246	\$7,135,509	\$6,850,294	\$6,544,732	\$6,217,917
Coverage Reserve Fund Requirement						
Coverage Reserve Fund Requirement	0	0	0	0	0	0
Coverage Reserve Fund Balance Beg	\$0	\$0	\$0	\$0	\$0	\$0
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0
Coverage Reserve Fund Balance End	\$0	\$0	\$0	\$0	\$0	\$0
DSCR Calculations						
DSCR - Total Revenues (No Coverage Reserve)	1.991	2.093	2.208	2.339	2.490	2.666
Compliance DSCR - Total Revenues W/Coverage Res	1.991	2.093	2.208	2.339	2.490	2.666
DSCR - Total CFAFDS w/Coverage Reserve	1.872	1.968	2.076	2.198	2.340	2.504
Bonds Outstanding						
Senior Debt Service Reserve Fund Balance Beg	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Contribution / (Release)	\$0	\$0	\$0	\$0	\$0	\$0
Senior Debt Service Fund Balance End	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655	\$11,714,655
Total Reserve Funds (Contribution) / Release	\$0	\$0	\$0	\$0	\$0	\$0
CF available for DS after reserve fund contr/release	\$14,319,528	\$14,562,977	\$14,809,816	\$15,060,070	\$15,313,760	\$15,570,909
CF Avail for Bond Redemption	\$6,502,534	\$6,993,079	\$7,505,655	\$8,041,124	\$8,600,377	\$9,184,340
Capitalized Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption 2020A	\$6,502,534	\$6,993,079	\$7,505,655	\$8,041,124	\$8,600,377	\$9,184,340
Bonds Outstanding 2020A	\$186,049,950	\$179,056,871	\$171,551,216	\$163,510,092	\$154,909,716	\$145,725,376
CF Available for Series 2020B Bonds Redemption	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest	\$0	\$0	\$0	\$0	\$0	\$0
Special Redemption Series 2020B	\$0	\$0	\$0	\$0	\$0	\$0
Series 2020B Bonds Outstanding	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137	\$5,884,137
Total Bonds Outstanding	\$191,934,087	\$184,941,008	\$177,435,353	\$169,394,230	\$160,793,853	\$151,609,513
Cash DSCR	1.000	1.000	1.000	1.000	1.000	1.000

Source: Waterford Residential

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

NOTE: Deferred and completed items are not listed

2021	OPEN				
Request No.	Topic	Submitted by:	A, F, CM, or CCM	Date requested or Rec'd Form	STATUS and/or DATE scheduled on City Council meeting agenda:
1	Partner with Assemblymember Alex Lee at the City at the Farmer's Market on October 24 to promote having safety resources with the Milpitas Police Department and Fire Department to participate in the event	Chua	CCM	9/7/2021	The Police and Fire Departments will be at the Farmer's Market on Oct. 24. Fire will set up a fire safety/preparedness booth have an engine stopping by when not on a call for service. PD will be present as well focusing on Halloween Safety.
2	Requested an outreach to notify the community of the trash voucher program	Chua	CCM	9/7/2021	The vouchers are valid until December 31, 2021. Staff will monitor the utilization of the vouchers and contact the recipients encouraging them to take advantage of the program.
3	Requested staff to prepare a report the monthly neighborhood clean-up day and ask for direction from the Council on what to do next	Chua	CCM	9/7/2021	This staff report will be agendized for Council discussion in late October/early November
4	Requested staff to notify Council if there is a plan to create a pathway from the skate park to the bathrooms and if there is no plan then bring an item to Council to create a pathway	Dominguez	CCM	9/7/2021	
5	Create an agreement with the owners of the electrical boxes so that the City could have access to remove the tagging within 24 hours	Dominguez	CCM	9/7/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

6	City designate more street sweeping signage at the different areas more specifically at Capital Avenue and Abel Street	Montano	CCM	9/7/2021	Staff is reviewing the pilot street sweeping routes with MSI.
7	Work with the school district to have a contest to creat art murals for the pillars on Main Street	Montano	CCM	9/7/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
8	Create a “Street Smart” program to provide traffic safety education to change driver, pedestrian, and bicyclist behavior and enhance safety in school zones and neighborhoods	Dominguez	CCM	8/17/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
9	City to highlight mental health resources on the website	Dominguez	CCM	8/17/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
10	Partner with the Rotary Club of Silicon Andhra to promote the stem cell donor outreach with a webinar and campaign to help increase the number of donors	Chua	CCM	8/17/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
11	Create an “Incentive Corner,” which will be a sub-page with links to different freebies, grants, and incentives from the City and the regions, including the Water District and Silicon Valley Clean Energy	Chua	CCM	8/17/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
12	Revisit the mask ordinance to help enforce the public expert’s recommendations	Phan	CCM	8/17/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
13	Look into creating a Poet Laureate similar to the County of Santa Clara County	Montano	CCM	8/17/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
14	Include a bust of Maria Lemire on the Mural in front of the Senior Center	Montano	CCM	8/17/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

15	Does the City have a Press Release Policy if so incorporate it in the City Council Handbook.	Tran	CCM	8/17/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
16	Requested staff look into donating old, obsolete, noncompliance items from the Fire Department to Sister City Dagupan	Chua	CCM	8/9/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
17	Look into allowing outdoor music and would like the ordinance brought back to Council.	Montano	CCM	8/5/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
18	Requested that the City create and ordinance that continues with the six-foot distancing	Montano	CCM	8/5/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
19	Look into how the City can be a resource for small businesses to help guide them on what to do in terms of ADA (Americans with Disabilities Act) requirements due to the quick changes made to facilities during the pandemic	Chua	CCM	8/5/2021	
20	Look into opening up the Senior Center on Saturdays for half a day	Chua	CCM	8/5/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion
21	Staff to bring a presentation forward regarding Project Home Key	Dominguez	CCM	8/5/2021	Scheduled for Council meeting in October
22	Look into bringing in a Hispanic food store into the City	Montano	CCM	8/5/2021	
23	Look into bringing back a roller rink	Montano	CCM	8/5/2021	Scheduled for next Quarterly Additional City Council Workplan Items Prioritization Discussion

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

	ACTIVE				
24	Topic	Submitted by:	A, F, CM, or CCM	Date requested or Rec'd Form	STATUS and/or DATE scheduled on City Council meeting agenda:
25	Discussion to recognize Juneteenth as a City holiday for City employees	Phan	CCM	6/21/2021	Discussed in Closed Session on 8/17/2021
26	Increase the City's rebate program to match Valley Water's two dollars rebate increase and look into expanding the "Lawn Buster" program to more residents based on income	Chua	CCM	6/15/2021	Valley Water Rebate Contract Amendment scheduled for Council consideration in September 2021; Contract with "Our City Forest" scheduled for Council approval in Fall 2021
27	ADU workshop in September/October	Chua	A	6/15/2021	8/09/2021 Council voted 5-0 to move this item forward in the winter 2021
28	Explore having a number for people experience mental health or substance abuse crisis to call to get a referral for help	Dominguez	CCM	6/1/2021	Per news reports, California finds \$20 million to help pay for new mental health 988 crisis hotline.
29	Discussion in the next fiscal year, to have a sliding scale permitting program for seniors and low-income residence for necessary safety renovations	Tran	A	5/4/2021	8/09/2021 Council voted 5-0 to move this item forward and modify the existing Milpitas Assistance program to include seniors
30	Information showing that the ordinance requiring developers to provide art features is being followed and an update on the Art developer fees.	Montano	A	5/4/2021	Information Memorandum scheduled to be released in September

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

31	Discussion to reduce the City's Senior Center facilities deposit	Montano	A	5/4/2021	8/09/2021 Council voted 5-0 to refer this item as part of the development of the FY 2022-23 Master Fee Schedule
32	Discussion on a policy that makes human trafficking training mandatory in the hospitality industry	Dominguez	A	4/20/2021	discussed at 8/09/2021 meeting; item will be modified to address training for City staff instead of hospitality industry and considred at next quarterly discussion
33	Clean-up on Earth Day	Montano	A	4/20/2021	8/09/2021 Council voted 4-1 to incorporate the event into the Beautify Milpitas program
34	Requested that the City have mini-libraries in the low-income areas of the City.	Montano	A	4/20/2021	8/09/2021 Council voted 3-1-1 to move this item forward, staff to work with Vice Mayor to get direction
35	Staff to create a plan on how to increase the number of local businesses doing business with the City	Chua	A	4/6/2021	Info memo will be prepared
36	Staff to look into creating a rose garden with a children's memorial site	Montano	A	4/6/2021	8/09/2021 Council voted 4-1 to to discuss details with Vice Mayor Montano and refer this item as part of the development of the 2023-2027 CIP
37	Staff to look into creating "Welcome to Milpitas" signs in key areas of in the City	Montano	A	4/6/2021	8/09/2021 Council voted 5-0 to move this item forward and work with organizations to sponsor the signs in key area at every exit off of the interstates
38	Staff to provide information to place a measure on the ballot to change the directly elected Mayor to a rotational at-large position	Tran	CCM	3/16/2021	To be agendized at a future City Council meeting, along with discussion of Mayor and Councilmember term limits

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

39	Staff to provide information on a landmark policy for the City of Milpitas	Tran	A	3/16/2021	Policy to be sent to Council if existing, or a new policy to be brought for Council consideration by December 2021; 8/09/2021 Council voted 5-0 to move this item forward
40	Discussion on exploring a mural program and requested information on the framework or best practices	Montano	A	3/16/2021	Approval of the Mural Program Policy and Procedure scheduled for 9/21/2021 City Council meeting
41	Discussion to memorialize those that have passed due to COVID19 in Milpitas	Dominguez	A	3/2/2021	8/09/2021 Council voted 4-1 to move this item forward no date was determined
42	Collaborative video with the City Council to send a message to help break the stigma against mental health	Dominguez	A	5/18/2021	In progress
43	Amendment to the existing ordinance for third-party food delivery vendor services to prohibit regulatory response fees	Phan	A	2/16/2021	Agendized for discussion on 3/16/2021, deferred to 4/06/2021; CC direction for City Attorney to prepare a report
44	Amend ordinance to remove affordable housing in-lieu fee; status update on this item	Chua	A	12/15/2020; 06/01/2021	Agendized on 1/5/21, Received Council majority vote on 2/2/2021 and 3/16/2021; staff will bring forward in Winter 2021
45	Ordinance to ban vaping in the City	Montano	A	12/15/2020	Ordinance regarding a ban on use in certain areas adopted by Council on 6/15/2021. Policy related to access to products will be brought forward in Fall/Winter 2021.
46	Review City policy on speed bumps	Tran	A	12/15/2020	Presented to Transportation Subcommittee on 02/12/2021; voted on 3/16/2021 to revisit this item

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

47	Require implicit bias training for City Council, Commissioners & staff	Dominguez	A	6/16/2020	approved 8/18/2020
48	Consider change in term limits for Mayor + Councilmembers	Montano	A	6/16/2020	8/4/2020: Voted 3 -2 to pursue; 2/02/2021 to agendize for a future meeting; 3/16/2021 voted 3-1-1 to move forward
49	Consider Community Museum and Park on Main St.	Phan	F	8/20/2019	to Rules 8/23/2019. Moved to Specific Plan Community Conversation events.

CCM: City Council Meeting

A: @Announcements

F: on a Form

CM: to/from City Manager