REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, JANUARY 5, 2021
MILPITAS, CA
6:00 PM (CLOSED SESSION)
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

City Council meeting is held via teleconference /Zoom webinar only (no physical meeting space).
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. Here is the link to register for this meeting only:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_KixQEBmBSkao50qmWNtz7A

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 or staff 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. online written comment form previously used is no longer available for public comment.

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 (6:00 PM)

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
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
Santa Clara County Superior Court Case No. 18CV325480

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

PLEDGE OF ALLEGIANCE (7:00 PM)

INVOCATION *(assigned to Mayor Tran)*

PUBLIC FORUM
Those interested are invited to address City Council on any subject not on tonight's agenda, orally via zoom webinar (instructions on page 1). Speakers may provide their name and city of residence for the Clerk's record, and comments may be limited to three minutes or less. As an item not listed on the agenda, no response is required from staff or Council and no action can be taken. The City Council may instruct the City Manager to place the item on a future meeting agenda.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS
Members of the City Council may make brief announcements or 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 subsequent 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 City Council Calendar of Meetings for January 2021 (Staff Contact: Pam Caronongan, 408-586-3003)

C2. Approve City Council meeting minutes of the December 10, 15, and 22, 2020 City Council Meetings (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve the meeting minutes of the December 10 and 22, 2020 Special and December 15, 2020 Special and Regular City Council meetings, as drafted by the City Clerk.

C3. Waive Second Reading and Adopt Ordinance No. 23.15 for Updates to the Milpitas Municipal Code on Purchasing (Staff Contact: Walter C. Rossmann, 408-586-3111)

Recommendation: Waive the second reading and adopt Ordinance No. 23.15 for updates to the Milpitas Municipal Code on Purchasing.

C4. **Adopt a Resolution Reviewing and Accepting the Annual Developer Fee Disclosure Information for the Calaveras Boulevard Widening Traffic Impact Fee, Milpitas Business Park Traffic Impact Fee, the Transit Area Specific Plan (TASP) Impact Fee, and the Storm Drain Fee for the Fiscal Year Ended June 30, 2020 (Staff Contact: Walter C. Rossmann, 408-586-3111)**

Recommendation**:** Adopt a resolution consistent with the Mitigation Fee Act to review and accept the annual developer fee disclosure information for the Calaveras Blvd Widening Traffic Impact Fee, Milpitas Business Park Traffic Impact Fee, Transit Area Specific Plan Impact Fee and Storm Drain Fee for the Fiscal Year Ended June 30, 2020.

C5. **Adopt a Resolution Amending the Classification Plan to Temporarily Suspend the Car Allowance for Executive Management Employees (Staff Contact: Jeannine Seher, 408-586-3086)**

Recommendation: Adopt a resolution amending the classification plan to temporarily suspending the car allowance (specified in adopted Resolution No. 8980) for executive management effective beginning in January of 2021.

C6. **Approve and Authorize the City Manager to Enter into a Side Letter to Amend the Memorandum of Understanding between the City and United Public Employees of California (UPEC Local 792), the Mid-Management and Confidential Unit (Staff Contact: Jeannine Seher, 408-586-3086)**

Recommendation: Approve and authorize the City Manager to enter into a side letter agreement with the United Public Employees of California (UPEC Local 792), the Mid-Management and Confidential Unit citing the correct section of the Government Code for temporary out of class pay.

C7. **Approve and Authorize the City Manager to Enter into a Side Letter to Amend the Memorandum of Understanding (MOU) between the City and Milpitas Employee Association (MEA) (LIUNA/ UPEC Local 792) regarding callback pay (Staff Contact: Jeannine Seher, 408-586-3086)**

Recommendation: Approve and authorize the City Manager to enter into a Side Letter to amend the Memorandum of Understanding (MOU) between the City and Milpitas Employees Association (MEA) (LIUNA/UPEC Local 792) amending the callback pay provisions as specified in the side letter.

C8. **Approve and Authorize the City Manager to Execute an Agreement with HCI Systems for a Five-Year Not-to-Exceed Contract Amount of $208,660 for Fire Alarm and Fire Suppression System Services (Staff Contact: Tony Ndah, 408-586-2602)**

Recommendation: Approve and authorize the City Manager to execute an agreement with HCI Systems for the Fire Alarm and Fire Suppression System Service, for an annual amount of $41,732 in the first year and a total not to exceed amount of $208,660 over the five year period, subject to the annual appropriation of funds.

C9. **Approve and Authorize the City Manager to Execute an Agreement with Silicon Valley Fire for a Five-Year Not-to-Exceed Contract Amount of $130,000 for the Fire Extinguisher Inspection and Testing Services (Staff Contact: Tony Ndah, 408-586-2602)**

Recommendation: Approve and authorize the City Manager to execute an agreement with Silicon Valley Fire for the Fire Extinguisher Inspection and Testing Service, for an annual amount of $26,000 in the first year and a total not to exceed from $130,000, over the five year period, subject to the annual appropriation of funds.

C10. **Per Mayor's Recommendations, Re-Appoint 1 Planning Commissioner and Appoint 1 New Veterans Commissioner (Contact: Mayor Rich Tran, 408-586-3029)**

Recommendation**:** Per Mayor Tran's recommendations, (1) re-appoint Planning Commissioner Bill Chuan to a new 3-year term to expire in December 2023, and (2) newly appoint Victorino Monzon to the Milpitas Veterans Commission to a currently vacant 3-year term that will expire in February 2022.

LEADERSHIP AND SUPPORT SERVICES (7:40 PM)

11. Introduce Ordinance No. 65.150 Regarding Responsible Construction (Staff Contacts: Christopher Diaz, 408-586-3040 and Steve McHarris, 408-586-3059)

Recommendation: Following the reading of the title by the City Attorney, move to waive the first reading beyond the title and introduce Option 2 - Ordinance No. 65.150, adding Chapter 32 (Responsible Construction) to Title III of the Milpitas Municipal Code.

12. Introduce Ordinance No. 309 to make corrections, clarifications, updates and modifications to the Milpitas Municipal Code (Staff Contacts: Christopher Diaz, 408-586-3040 and Ashwini Kantak, 408-586-3053)

Recommendation: Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 309 amending various sections of Titles I, IV, V, VIII, X, and XI of the Milpitas Municipal Code to make corrections, clarifications, updates and modifications.

REPORTS OF MAYOR & COUNCILMEMBERS (8:40 PM)

13. Consider Mayor's Appointments of City Councilmembers as Liaisons to City Commissions, City Subcommittees, and Outside Agency Boards and Committees (Contact: Mayor Rich Tran, 408-586-3029)

Recommendation**:** Consider Mayor's appointments of City Council embers to liaisons of City Commissions, City Subcommittees, and outside agencies, boards and committees, and move to confirm those appointments.

14. Per Request of Mayor Tran, Discuss Formation of a City Homelessness Task Force (Contact: Mayor Rich Tran, 408-586-3029)

15. Per Request of Mayor Tran, Discuss City of Milpitas Commission Structure, including Current Term Limits (Contact: Mayor Rich Tran, 408-586-3029)

16. Discuss Potential of Amending Milpitas Municipal Code to require residential developers to include 15% affordable units and remove the Option to Pay Fees in-lieu (Contact: Council member Chua, 408-586-3000)

17. Receive and Direct Staff on List of Agenda Items Requested by City Councilmembers (Contacts: Mayor and City Councilmembers, 408-586-3000)

Recommendation: Review list of items presented (list in agenda packet) that have been requested by City Councilmembers on a form, at a Council meeting, or through the City Manager. Direct items to a City Council Subcommittee, to be placed onto a specific meeting date, or specify alternate direction to staff. 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.

NEXT AGENDA PREVIEW (9:45 PM)

18. Receive Preview List of Anticipated Items for the Next Regular City Council Meeting Scheduled on January 19, 2021 (Staff Contact: Pam Caronongan, 408-586-3003)

Recommendation: Receive list of anticipated agenda items for the January 19, 2021 regular City Council meeting.

ADJOURNMENT (10:00 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 408-586-3003 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 mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance.

December 2020

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Milpitas City Council Calendar

January 2021

February 2021

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 **CITY HALL CLOSED** **NEW YEAR'S DAY**	**2**
3	**4** **7:00 PM**-Parks, Recreation & Cultural Resources Commission (AP)	**5** **6:00 PM**-Closed Session **7:00 PM**-City Council	**6** **2:00 PM**-Santa Clara VTA Monthly Briefing - Northeast Group **7:00 PM**-Community Advisory Commission	**7** **5:30 PM**-Santa Clara VTA Board of Directors **5:30 PM**-Milpitas Chamber of Commerce Board (CM)	**8**	**9**
10	**11** **4:30 PM**-Economic Development and Trade Commission (KD) **7:00 PM-**Library and Education Commission (CM)	**12** **4:00 PM-**Milpitas HOPE Suicide Prevention Task Force	**13** **12:00 PM**-Santa Clara Valley Water District - Water Commission (CM) **7:00 PM**-Planning Commission **7:00 PM**-Silicon Valley Clean Energy Board of Directors (CM)	**14** **4:00 PM**-Santa Clara VTA Policy Advisory Committee (KD) **4:00 PM**-Treatment Plant Advisory Committee (CM) **7:00 PM**-Cities Assoc of SCC (CM) **7:00 PM**-Youth Advisory Commission (AP)	**15** ***4:30 PM**-City Council Finance Subcommittee (RT/CM)*	**16**
17	**18** **MARTIN LUTHER KING JR. BIRTHDAY** **CITY HALL CLOSED**	**19** **?:00 PM**-Closed Session **7:00 PM**-City Council	**20** **6:00 PM**-Energy and Environmental Sustainability Commission	**21** **6:30 PM**-Bay Area Water Supply Conserv Agency (CM) **7:00 PM**-Public Safety and Emergency Preparedness Commission (KD)	**22**	**23**
24	**25** **6:00 PM-**Science, Technology and Innovation Commission **7:30 PM**-Arts Commission (CM)	**26** **?:00 PM-**Special City Council-Budget Session	**27** **7:00 PM**-Planning Commission	**28**	**29**	**30**
31						

Finance Subcommittee will only meet as needed

Updated 12/21/20

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of:	**Special Meeting of the Milpitas City Council**
Date:	**Thursday, December 10, 2020**
Time:	**9:00 AM**
Location:	**Meeting held via teleconference/zoom webinar Milpitas, CA**

CALL TO ORDER

Mayor Tran called the special meeting to order at 9:02 AM. City Clerk called the roll. The meeting took place via teleconference/zoom webinar.

PRESENT: Mayor Tran, Vice Mayor Nuñez, Councilmembers Dominguez, Montano and Phan

ABSENT: None

PLEDGE

Mayor Tran led the pledge of allegiance to the flag.

APPROVAL OF AGENDA

Upon motion by Mayor Tran seconded by Councilmember Dominguez, the special meeting agenda for December 10, 2020 was approved by unanimous vote.

ANNOUNCEMENT OF CONFLICT OF INTEREST

City Attorney Chris Diaz asked Councilmembers if they had any personal conflicts of interest. By roll call, no conflicts were reported.

PUBLIC FORUM

None

AGENDA ITEM

1. Resolution – Measure F

Deputy City Manager/Finance Director Walter Rossmann explained the next steps necessary to implement the sales and use tax increase, following voters' approval of adoption of an Ordinance to allow for a ¼ cent increase. Measure F was approved on November 3, 2020 with 60% "yes" votes. Finance staff was required to submit documents to the California Department of Taxation and Fee Administration by December 11. Thus, the Milpitas City Council was asked to adopt a resolution declaring the election result on the measure only.

Mayor Tran asked for public comments and heard from one resident, Urvishkumar Mehta. The Mayor encouraged him to apply to serve on the Measure F Oversight Committee.

Motion: to adopt Resolution No. 9023 reciting that a General Municipal Election was held on November 3, 2020 for voter consideration of Measure F and declaring the result in favor of Measure F (a 1/4¢ sales tax)

Motion/Second: Mayor Tran/Councilmember Phan

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

ADJOURNMENT

Mayor Tran adjourned the special City Council meeting at 9:23 AM.

Meeting minutes submitted by
Mary Lavelle, City Clerk

Draft CITY OF MILPITAS
MEETING MINUTES

Minutes of: **Special Meeting of the Milpitas City Council**
Date: **Tuesday, December 15, 2020**
Time: **5:00 PM**
Location: **Meeting held via teleconference/zoom webinar online, Milpitas, CA**

CALL TO ORDER

Mayor Tran called the special meeting to order at 5:08 PM. City Clerk Mary Lavelle called the roll. The meeting took place online via zoom webinar.

PRESENT: Mayor Tran, Vice Mayor Nuñez, Councilmembers Dominguez and Phan

ABSENT: Councilmember Montano was absent at roll call. She arrived in the online meeting at 5:20 PM.

PLEDGE

Mayor Tran led all in the pledge of allegiance to the flag.

PUBLIC FORUM

Resident Inderjit Mundra was the only speaker.

AGENDA ITEMS

1. Adopt a Resolution – Election Results

City Clerk Mary Lavelle reported the November 3, 2020 election results, stating Rich Tran was re-elected as Mayor to a two-year term, along with Anthony Phan and Evelyn Chua elected as City Councilmembers to four-year terms.

Motion: to adopt Resolution No. 9024 confirming the official canvass of election returns and declaring the results of the General Municipal Election held on November 3, 2020 for Mayor and two City Council-members

Motion/Second: Mayor Tran/Vice Mayor Nuñez

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

2. Presentation to Outgoing Vice Mayor Bob Nuñez

Mr. Hiep Nguyen from Congressman Ro Khanna's office presented a certificate online to Vice Mayor Nuñez.

Mayor Tran and all Councilmembers thanked the outgoing Vice Mayor for his time on the Council, honoring his four years of service to the City. The Mayor also presented Mr. Nuñez with an encased US flag that had flown outside Milpitas City Hall.

Vice Mayor Nuñez thanked his City Council colleagues for their complimentary remarks.

3. Ceremonial Oaths

Pastor Nick Belaski, invited by Mayor Tran, offered a prayer.

Mr. Kelly King, Milpitas High School teacher and coach, issued the oath of office to Mayor Tran in the meeting.

Video presentations were displayed for Anthony Phan who was sworn in by Bob Nuñez, and Evelyn Chua who was sworn in by her daughter Weilin Bui.

The Mayor announced a short break following the videos. During the break, the City Clerk issued the official oath of office to the three newly elected officials. The officials Oaths were to be signed later in the City Clerk's office and a Certificate of Election was distributed to each.

Following the swearing-in, Evelyn Chua joined the meeting as a member of the City Council.

4. Election of Vice Mayor

Mayor Tran announced his recommendation of Councilmember Carmen Montano to serve as Vice Mayor for the next two years.

Motion: to affirm the Mayor's recommendation to appoint Carmen Montano to serve as Milpitas Vice Mayor

Motion/Second: Mayor Tran/Councilmember Chua

Motion carried by a vote of: AYES: 4
NOES: 0
ABSTAIN: 1 (Dominguez)

ADJOURNMENT

The Special City Council meeting was adjourned at 6:50 PM.

Draft meeting minutes submitted by
City Clerk Mary Lavelle

Draft CITY OF MILPITAS
MEETING MINUTES

Minutes of: **Regular Meeting of the Milpitas City Council**
Date: **Tuesday, December 15, 2020**
Time: **6:30 PM Closed Session**
7:00 PM Open Session
Location: **Meeting held via teleconference/zoom webinar online**
Milpitas, CA

CALL TO ORDER

Mayor Tran called the regular meeting to order at 6:52 PM. City Clerk Mary Lavelle called the roll. The meeting took place via teleconference/zoom webinar.

PRESENT: Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez and Phan

ABSENT: None

CLOSED SESSION

City Council adjourned to Closed Session to discuss one item listed on the agenda, potential litigation with City as defendant. At 7:45, the members reconvened for the public meeting.

CLOSED SESSION ANNOUNCEMENT

City Attorney Chris Diaz said there was no reportable action out of Closed Session.

PLEDGE

Mayor Tran led all in the pledge of allegiance to the flag.

INVOCATION

Councilmember Phan paraphrased a quote from writer Ernest Hemingway.

Mayor Tran presented Keys to the City and Commendations to retiring Milpitas Police Chief Armando Corpus and City Clerk Mary Lavelle. The Mayor and Councilmembers offered their thanks, following their many years working for the City of Milpitas.

PUBLIC FORUM

The following residents commented: Yolie Garcia, Inderjit Mundra, Voltaire Montemayor, Urvishkumar Mehta, and Jackie Romero.

ANNOUNCEMENTS & FUTURE AGENDA ITEMS

City Manager McHarris announced the Economic Development office would host a webinar on “Next 30 Days of Your Business” to help local businesses in Milpitas to succeed at this challenging time.

Mayor Tran announced his appreciation for the Public Works Department staff’s work installing holidays lights at City Hall, expressing gratitude from local residents.

The Mayor asked City Councilmembers to state the topics they would like added to upcoming City Council agendas in 2021.

Mayor Tran:

1) Consider a change in the City Commission structure, including the three-term limit, and bring it back on the next City Council agenda.
2) Review the City’s policy on speed bumps, on an agenda within three months, for neighborhood safety.
3) Propose building height limits on the eastern side of Milpitas Blvd., north and south, within six months.

4) Propose a Homelessness Task Force, and bring it back the first meeting in January.

Councilmember Phan:
1) Agenda, item no. 14 (ideas to help the community during covid) to be discussed when the next budget would be developed in 2021.
2) Agenda item no. 15, a Safety First community event: forum to discuss that would be during Public Safety Month in 2021, and after a new Police Chief was appointed.

Vice Mayor Montano:
1) Within the next six months, place the Economic Development Corp. on the agenda, to help the community with ventures, and have staff look into the EDC.
2) Consider an ordinance to ban vaping in the City, as a potential research topic for staff to look into.
3) For "Old Town" Main Street revitalization, form a subcommittee, locate funding, and spur economic development on Main St. Have a discussion on this.
4) Consider a plan to place utility fines into a fund to help small businesses (including payment of utilities) in the City.

Councilmember Chua:
1) First meeting in January, vote on an amendment to the Housing Ordinance not allowing developers to pay fees and to require building 15% affordable housing in new developments (i.e. not pay in lieu fee). Councilmember Phan asked if it was legal to do and City Attorney Diaz replied that with for-sale units, the City could require the affordable units built. For rental units, the City must provide options.
2) Create a Beautify Milpitas Subcommittee, Commission, or Task Force. Define the objectives and mission in order to plan for repairs, clean up, infrastructure and beautification of the City.
3) Concerning a second federal stimulus package, have a report from city staff on what the City was doing to seek funding from the federal government – with an action plan for tapping into those funds.
4) Since Measure F passed, expedite the required Oversight Committee, with a process of selection, objectives. Finance Director Walter Rossman explained the process would be determined in next two to three weeks, and the Mayor would nominate members in early February 2021.
5) Schedule and host a "Milpitas Business Expo" toward the end of next year and start planning for it soon.

Councilmember Dominguez:
1) Asked to have an expert in government teach a class in Government 101 to the City Council, as so many ideas were discussed. Maybe bring in a San Jose State University professor to understand roles and responsibilities, and for the Council to figure out priorities and stay focused. She asked the City Manager if this training/ class/discussion could occur at the Council retreat. Clarified this was information for 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 or reportable campaign contributions. By roll call, no conflicts of interest or contributions were reported.

CODE OF CONDUCT

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

APPROVAL OF AGENDA

Motion: to approve the December 15, 2020 meeting agenda, as amended, with deferral of items no. 14 and no. 15

Motion/Second: Mayor Tran/Councilmember Dominguez

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

CONSENT CALENDAR Motion: to approve the consent calendar, including items no. C1 – C11

Mayor Tran commented on item no. C8 (Side Letter with MPOA), thanking the police organization for stepping up to defer a pay increase. He highlighted item no.C9 (donation to senior center) and read aloud a statement from the family of Andrea Dorey.

Councilmember Chua spoke on item no. C10 (5-year agreement document imaging), pleased with a condition for yearly review of the performance of the provider, BMI Imaging, allowing for flexibility if needed over five years.

Motion/Second: Mayor Tran/Vice Mayor Montano

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

C1. Council Calendar	Received the City Council calendars of upcoming meetings for December 2020 and January 2021.
C2. Meeting Minutes	Approved the meeting minutes of the December 1, 2020 City Council meeting.
C3. Adopt Resolution	Adopted Resolution No. 9025 granting acceptance of Creighton Park Renovation, Project No. 5109, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance.
C4. Adopt Resolution	Adopted Resolution No. 9026 approving and authorizing the City Manager to purchase three Caterpillar XQ230 200kW and one Caterpillar XQ425 375kW Portable Generators from Peterson Power Systems through a Sourcewell cooperative contract in the amount of $609,118.03.
C5. Adopt Resolution	Adopted Resolution No. 9027 updating the City of Milpitas Conflict of Interest Code in 2020, including the list of employee classifications required to file annually the FPPC Form 700/Statement of Economic Interests.
C6. Two Resolutions	Adopted Resolutions No. 9028 and No. 9029 authorizing the Finance Director to execute agreements and other documents with the California Department of Tax and Fee Administration for implementation of Measure F.
C7. Agreement per SB35	Approved and authorized the City Manager to execute the Agreement with Raimi & Associates to provide consulting services related to the preparation of Objective Design Standards in accordance with California Senate Bill 35.
C8. Side Letter with MPOA	Approved and authorized the City Manager to enter into a side letter agreement with the Milpitas Police Officers Association (MPOA) to extend the existing labor agreement through December 31, 2023; eliminate a 5% salary increase scheduled for January 2021; and provide for salary increases of 2.5% each for July 2022 and July 2023.
C9. Accept Donation	Approved and accepted a $50,000 donation to the Barbara Lee Senior Center from the Andrea Dorey Estate.
C10. Agreement with BMI Imaging Inc.	Received report on bids. Awarded and authorized City Manager to execute a five-year General Services Agreement with BMI Imaging Inc. in the amount of $380,000 for document digitization and microfiche services for various City departments, subject to annual appropriation of funds.

C11. Appoint Resident to VTA BPAC

Appointed Milpitas resident Kristal Caidoy to the Santa Clara Valley Transportation Authority's Bicycle and Pedestrian Advisory Commission (BPAC) to a two-year term retroactively starting July 1, 2020 through July 1, 2022.

COMMUNITY SERVICES

12. Award Agreement for Fire Station No. 2 Replacement, CIP No. 3447

City Engineer Steve Erickson presented past steps and history on the recommendation for the award of agreement with a contractor for the CIP project to fully rebuild Milpitas Fire Station No. 2. He detailed how staff responded to a bid protest, and to concerns raised by two City Councilmembers about the top bidders.

Mr. Dan Wood from Sausal Corp. (lowest bidder) was present and answered questions from the City Council.

Mayor Tran invited public comments and heard from: Voltaire Montemayor, Jackie Romero, Urvishkumar Mehta, and Rick Solis from bidder Overaa & Co.

(a) Motion: to adopt Resolution No. 9030 to reject a bid protest from C. Overaa & Co., waive immaterial bid deviations and award the construction contract to Sausal Corporation in the amount of $7,638,200 for the Fire Station No. 2 Replacement Project No. 3447; authorize the City Manager to execute the agreement with Sausal Corp.; and authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed $1,200,000

Motion/Second: Mayor Tran/Councilmember Chua

Motion carried by a vote of: AYES: 3
NOES: 1 (Phan)
ABSTAIN: 1 (Dominguez)

(b) Motion: to approve and authorize the City Manager to execute Amendment No. 1 to the Design Services Agreement with Shah Kawasaki Architects to increase compensation by $75,000

Motion/Second: Mayor Tran/Councilmember Chua

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

(c) Motion: to approve a budget amendment for the Fire Station No. 2 Replacement Project No. 3447 by reducing lease revenue bonds proceeds and construction costs by $3.4 million

Motion/Second: Mayor Tran/Councilmember Chua

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

(d) Motion: to reconsider the vote on 12c above and to take a new vote on it

Motion/Second: Mayor Tran/Councilmember Chua

Motion carried by a vote of: AYES: 3
NOES: 1 (Phan)
ABSTAIN: 1 (Dominguez)

(e) Motion: to approve a budget amendment for the Fire Station No. 2 Replacement Project No. 3447 by reducing lease revenue bonds proceeds and construction costs by $3.4 million

Motion/Second: Mayor Tran/Councilmember Chua

Motion carried by a vote of: AYES: 3
NOES: 1 (Phan)
ABSTAIN: 1 (Dominguez)

PUBLIC SAFETY

13. Update on Covid-19 testing

Fire Battalion Chief Geoff Maloon reported on the fixed Covid19 testing site at Milpitas Library and pop-up testing at the Milpitas Sports Center, mobile unit, and the costs. $278,000 in additional funding was anticipated for testing needed through March 31, 2021, with potential FEMA reimbursement.

Mayor Tran proposed reducing the funding to 60% and offer testing three days per week rather than five, for the near future, unless FEMA does reimburse costs.

Councilmembers commented and offered varying ideas for testing and funding.

Mayor Tran invited public comments and heard from: Jackie Romero and Urvishkumar Mehta.

(a) Motion: to receive a staff update regarding the status of Covid-19 testing in Milpitas

Motion/Second: Councilmember Chua/Mayor Tran

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

(b) Motion: to authorize up to $139,000 (half of the $278,000 recommended by staff) to fund the City's mobile testing unit and the County testing sites, with testing continuing 5 days per week, 45 days into the new year through February 14, 2021 (half of the time period recommended)

Motion/Second: Councilmember Chua/Mayor Tran

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

(c) Motion: to approve and authorize the City Manager to execute Amendment No. 2 to the Agreement with IGeneX extending the term from Oct. 31, 2020 to Dec. 31, 2021

Motion/Second: Councilmember Chua/Mayor Tran

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

REPORTS

14. Council Ideas to Assist

This item was removed from the agenda. It would be heard later when the next year's budget discussions were scheduled.

15. Safety Event

This item was removed from the agenda. It would be discussed later in 2021 when a new Police Chief is appointed and during Public Safety Month.

16. List of Council requested Agenda Items

Received the list of agenda items requested by Mayor and City Councilmembers.

Mayor Tran asked Councilmembers to review the remaining five items for 2020 on the list. The Mayor asked when to discuss or schedule each item.

On item No. 5 – the Milpitas Minuteman. Councilmember Phan said no vote or action was needed, since it would come back when branding was on a future Council agenda.

On item No. 4 – state certification for NEC electrical. Councilmember Dominguez reported that staff had explained that appropriate staff was already certified so nothing was necessary to come back to City Council.

On item No. 3 - day worker program. Vice Mayor Montano cited this was a very complex topic with multiple issues. Mayor Tran agreed to remove it from the list at this time and said he and the Vice Mayor could meet and discuss in the future.

On item No. 2 – Historical Commission. Vice Mayor Montano reported that the existing Parks & Recreation Commission included Cultural Resources, which partly covers historical topics. Mayor Tran responded that at the next regular meeting (January 5, 2021), there will be an item pertaining to Commissions, so this could be included.

On item No. 1 – consider satellite consular offices. Vice Mayor Montano asked to maintain this idea on the list, for discussion post-Covid.

Mayor Tran encouraged his colleagues to bring forth proposals and ideas to work on, in order to help residents.

Mayor Tran noted that it was time for Councilmember appointments to outside boards and agencies. He asked his colleagues to send him their requests for appointments, including liaisons to City Commissions.

NEXT AGENDA PREVIEW

17. Preview Agenda Items

Received list of anticipated agenda Items for the next regular City Council meeting scheduled for January 5, 2021.

ADJOURNMENT

Mayor Tran adjourned the regular City Council meeting at 12:2 AM on Wednesday, December 16, 2020, in memory of Elaine Levine, co-founder of The Milpitas Post newspaper.

Draft meeting minutes submitted by
City Clerk Mary Lavelle

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of:	**Special Meeting of the Milpitas City Council**
Date:	**Tuesday, December 22, 2020**
Time:	**12:00 PM**
Location:	**Meeting held via teleconference/zoom webinar Milpitas, CA**

CALL TO ORDER

Mayor Tran called the special meeting to order at 12:01 PM. City Clerk Mary Lavelle called the roll. The meeting took place via teleconference/zoom webinar.

PRESENT: Mayor Tran, Vice Mayor Montano and Councilmember Chua

ABSENT: Councilmembers Dominguez and Phan were not present at roll call. Both arrived online in the meeting moments after the roll call.

PLEDGE

Mayor Tran led the pledge of allegiance to the flag.

PUBLIC FORUM

None

CLOSED SESSION

City Council adjourned to Closed Session to discuss one item concerning labor negotiations, as listed on the agenda. At 1:15 PM, Councilmembers exited the closed session.

CLOSED SESSION ANNOUNCEMENT

City Attorney Chris Diaz said that while direction was given to staff, there was no reportable action out of Closed Session.

ADJOURNMENT

Mayor Tran adjourned the special City Council meeting at 1:18 PM.

Meeting minutes submitted by
Mary Lavelle, City Clerk

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Waive Second Reading and Adopt Ordinance No. 23.15 for Updates to the Milpitas Municipal Code on Purchasing**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	1/5/2021
Staff Contact:	Walter C. Rossmann, Deputy City Manager, 408-586-3111
Recommendation:	Waive the second reading and adopt Ordinance No. 23.15 for updates to the Milpitas Municipal Code on Purchasing.

Background:
On December 1, 2020, the City Council voted to introduce Ordinance No. 23.15 to update the municipal code section on purchasing which include changes to the Ordinance to Procurement Methods and Procedures, increased bidding thresholds and related contract amendment authority, annual reporting requirements and deadlines for sole source purchases and standardization of equipment, changes of definitions, and alignment to existing practices.

The recommended changes to the ordinance will streamline the City's purchasing system to reduce the administrative burden and cost while ensuring open and fair competition and competitive pricing. A detailed discussion of the recommended updates can be found in the staff report heard during the December 1 City Council meeting.

Analysis:
After introduction of the Ordinance staff identified a few clerical errors in the numbering of sections and a few minor missing basic terms. These clerical errors have been corrected in the attached Ordinance for adoption. A redlined version showing the corrections made is also attached for reference.

Additionally, through the revision process of the attached Ordinance, staff inadvertently deleted a paragraph of Section I-2-3.13 - Contracting for Consultants which provides for contracting for consultant services without the necessity of a competitive process. Staff will return to Council with a forthcoming Municipal Code clean-up agenda item to address this language.

With approval of this item, the City Council will adopt Ordinance No. 23.15 updating the Municipal Code on Purchasing. The Ordinance will go into effect on February 4. During the next four weeks, Finance staff will update procedures, align the City's e-procurement system, and train City staff consistent with the updated Ordinance.

Policy Alternative:

Alternative: Do not adopt the Ordinance changes.

Pros: Staff will continue procuring goods and services within the existing framework of rules and regulations.

Cons: The Ordinance changes are modernizing the existing Ordinance consistent with best practices.

Reason not recommended: Our City would not streamline the City's purchasing system to reduce the administrative burden and cost while ensuring open and fair competition and competitive pricing.

Fiscal Impact:
With Council approval of the recommended Ordinance amendments, the citywide purchasing system will be streamlined freeing up staff time to work on other high priority projects.

California Environmental Quality Act:
Not applicable

Recommendation:
Waive the second reading and adopt Ordinance No. 23.15 for updates to the Milpitas Municipal Code on Purchasing.

Attachment:
Ordinance No. 23.15 for adoption
Redlined version of Ordinance for reference

REGULAR

NUMBER: 23.15

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTERS 2 (PURCHASING) AND 310 (OPEN GOVERNMENT ORDINANCE) OF TITLE I (ADMINISTRATION) OF THE MILPITAS MUNICIPAL CODE RELATING TO PURCHASING

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of December 1, 2020, upon motion by Councilmember Phan, 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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
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 supports all City Departments to procure and contract for goods and services while ensuring fair and open competition consistent with the Municipal Code; and

WHEREAS, the City studied its procurement function including process mapping to streamline procurement processes and reducing administrative costs while ensuring competitive pricing; and

WHEREAS, on March 16, 2020, the County of Santa Clara ordered residents to shelter-in-place ("Shelter-In-Place Order") in response to the COVID-19 pandemic; and

WHEREAS, the Shelter-in-Place Order accelerated the streamlining of operations through online approval of contracts using DocuSign, implementation of the contract management database for contracts originating from the Purchasing Division including automatic notification for renewal of contracts and insurance, and online payment for Procurement Card (P-Card) purchases; and

WHEREAS, further streamlining while ensuring fair and open competition and competitive pricing is dependent on updating the Purchasing Ordinance; and

WHEREAS, on September 1, 2020, the City Council approved the COVID-19 Fiscal Response Strategies and Guidelines; and

WHEREAS, the City Manager was directed to follow these fiscal strategies and guidelines to ensure an effective response to the economic crisis and related impact on the City's finances caused by COVID-19, while minimizing service cuts to our community; and

WHEREAS, one of these fiscal strategies and guidelines directs the City Manager to identify and bring forward for Council consideration City policy and ordinance changes, as applicable, that would enable/facilitate service delivery improvements; and

WHEREAS, the primary recommended changes to the City's Purchasing Ordinance include updating procurement methods and procedures, increasing bidding thresholds and related contract amendment authority, establishing annual reporting requirements and deadlines for sole source purchases and standardization of equipment, changing definitions, and aligning the Purchasing Ordinance with existing practices.

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 I, CHAPTER 310

Title I (Administration), Chapter 310 (Open Government Ordinance), Section 3.70 (Public Information that Must be Disclosed) of the Milpitas Municipal Code is hereby amended to read as follows:

I-310-3.70 - Public Information that Must be Disclosed

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda. No preliminary draft or memorandum shall be exempt from disclosure under Government Code section 6254, subdivision (a) if it is normally kept on file. Preliminary drafts and memoranda concerning contracts, memoranda of understanding, or other matters subject to negotiation or pending Council approval shall not be subject to disclosure to this provision until final action has been taken.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this chapter:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any Milpitas governmental ethics code, or this Chapter.

(2) Unless otherwise privileged under California law, when litigation is adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Contracts, Bids and Proposals.

(1) All initial City Requests for Proposals ("RFP's") shall be kept in a central repository and shall be made available for public inspection. In addition, RFP's shall be placed on the City's website for a period from the date the RFP was issued to the date that the RFP is due.

(2) Contracts, contractors' bids, responses to requests for proposals and all other records of communication between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to an RFP has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of an RFP has been completed.

(3) During the course of negotiations for:

(i) Personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) Leases or permits having total anticipated revenue or expense to the City;

(iii) Any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five (5) working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying.

(d) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(e) Appraisals, offers and counteroffers relating to the City's purchase of real property are exempt until an agreement is executed. If an agreement for purchase is not submitted to the Council for approval then this exemption expires 1 year after negotiations are terminated.

(f) Neither the City nor any officer, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 2

Title I (Administration), Chapter 2 (Purchasing) of the Milpitas Municipal Code is hereby amended to read as follows:

Chapter 2 - PURCHASING

Sections:

Section 1 - Purpose and Application: Definitions

I-2-1.01 - Purpose

The purpose of this Purchasing Ordinance is to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

I-2-1.02 - Application

Except as otherwise provided herein, this Chapter applies to contracts for the procurement of supplies and services entered into by the City. When the procurement involves the expenditure of federal assistance, contract, or grant funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. Nothing in this Chapter shall prevent the City and any City affiliated agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

I-2-1.03 - Definitions

The words defined in this section shall have the meanings set forth below whenever they appear in the Purchasing Ordinance, unless the context in which they are used clearly requires a different meaning; or, a different definition is prescribed for a particular section or provision.

1. BIDDER. Any person who submits a response to a competitive City solicitation.
2. BUSINESS. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
3. CITY. The City of Milpitas and City affiliated agency.
4. CONTRACT. All types of City contracts, agreements, or purchase orders with the exception of public works contracts, for the procurement of supplies and services or the disposal of surplus supplies.
5. CONTRACT MODIFICATION. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract.
6. CONTRACTOR. Any person having a contract with the City.
7. DATA. Any recorded information, regardless of form or characteristic.
8. ELECTRONIC. Any electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
9. ELIGIBLE LOCAL PROVIDER. Any local provider who is an otherwise responsible bidder and otherwise responsive to a City's competitive solicitation.

10. ENVIRONMENTALLY PREFERABLE PRODUCTS OR MATERIALS. Any products or materials contained in the products that have a reduced negative effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials' acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product.
11. GENERAL SERVICES. The furnishing of goods and services by a vendor that does not typically require a license, certification or other professional criteria to perform the work. This includes services such as equipment maintenance, janitorial, printing, landscaping and refuse disposal.
12. GRANT. Any furnishing of funds by an outside agency or other organization to support a program authorized by law.
13. LOCAL PROVIDER. A supplier or provider of equipment, materials, supplies or services which has an established place of business within the City of Milpitas, which has a City of Milpitas business license, which has paid all currently due business license fees and taxes, and which began doing business within the City of Milpitas at least one (1) year prior to the City's inviting bids or quotations for the respective purchase.
14. PERSON. Any business, individual, union, committee, club, other organization, or group of individuals.
15. POST-CONSUMER MATERIAL OR PRODUCT. Any material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item, including any waste material and by-products which have been recovered or diverted from solid waste.
16. PROCUREMENT. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection, and solicitation of sources, preparation and award of contract and contract administration.
17. PROFESSIONAL SERVICES. Services, generally of an intangible nature that typically require a license, certification, and/or other professional criteria to perform the work as defined by the laws of the State of California including, but not limited to, Architect, Engineer, Land Surveyor, Attorney, Public Accountant as well as information technology services such as installation and implementation of information technology projects, software licensing and maintenance, and Software as a Service (SaaS).
18. PROVIDER. The terms bidder, supplier, contractor, vendor or provider, may be used interchangeably and shall refer to the person, company, or corporation from whom the City of Milpitas purchases supplies or services or with whom the City enters into a contract.
19. PUBLIC AGENCY. A public agency is defined as any school district, City, state, federal agency, U.S. Communities program or other nonprofit association or group consisting of governmental entities.
20. PUBLIC NOTICE. The distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods shall often include, but are not limited to, publication in newspapers of general circulation, posting in public places, electronic or paper notices to prospective bidders, and posting on web pages designated by the City for that purpose.
21. PUBLIC WORKS CONTRACT. Any City contract for the performance of a "public project" as defined in Public Contract Code section 22002, as it may be amended from time to time.
22. PURCHASING AGENT. The Purchasing Agent, the Director of Finance or his or her designee, or such position designated by the City Manager to administer this Chapter.
23. REQUESTING DEPARTMENT. Any organizational unit of the City of Milpitas that utilizes any supplies or services procured under this Ordinance.
24. RESPONSE. means a bid, proposal, quote, statement of qualification or other communication offered in response to a competitive City solicitation.
25. RESPONSIBLE BIDDER. A bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work.
26. RESPONSIVE BIDDER. A bidder who has complied with the instructions and requirements established by the City and set forth in the City’s solicitation documents.
27. SIGNATURE. Shall be defined as a manual signature affixed in ink or provided through other acceptable means established by law. A faxed or scanned signature is acceptable.
28. SPECIFICATION. Any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

29. SOLICITATION. An invitation for bids or request for proposals, qualifications, quotes, or other document including all documents, whether attached or incorporated by reference, utilized in furtherance of a City procurement of goods or services.
30. SUPPLIES. All property (including, but not limited to, equipment, goods and materials) except as otherwise provided herein.
31. SURPLUS SUPPLIES. Supplies which are worn out, obsolete or unsuitable for City use.
32. WRITING OR IN WRITING. The product of any method of forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Section 2 - Division of Purchasing

I-2-2.01 - Establishment

There is hereby established for the City a Division of Purchasing, headed by a Purchasing Agent, who shall report to the Director of the Finance Department.

I-2-2.02 - Responsibilities

In accordance with this Chapter, the Purchasing Agent shall:

1. Procure or supervise the procurement of all supplies and services needed by the City, except as otherwise provided herein;
2. Award contracts for Fifty Thousand Dollars ($50,000) or less;
3. Amend contracts or purchase orders awarded for amounts of Fifty Thousand Dollars ($50,000) or less as necessary, as long as the total amount of the amended contract does not exceed Fifty Thousand Dollars ($50,000).
4. Sell, trade or otherwise dispose of surplus supplies belonging to the City;
5. Establish and maintain programs for specification development, contract administration and inspection and acceptance, in cooperation with the departments using the supplies and services;
6. Provide ongoing training and support to the City departments pertaining to procurement of supplies or services;
7. Administer contracts with vendors for the purchase of citywide services and supplies such as paper, office supplies, janitorial services and office equipment;
8. Establish and maintain a central vendor database categorized by goods and services;
9. Provide management of the Procurement Card and Single Merchant Credit Card Programs;
10. Adopt operational procedures relating to the execution of any of the above duties and responsibilities.

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) or less. For supplies, materials, and equipment, the department shall use a Procurement Card or submit a Purchase Requisition to Finance for issuance of a Purchase Order. For services with a value greater than One Thousand Dollars ($1,000), the department shall submit a Purchase Requisition to Finance for issuance of a contract and ensure compliance with insurance requirements as promulgated by the Risk Manager.

I-2-2.04 - Delegation

The Purchasing Agent may delegate authority to purchase supplies, or services, and to dispose of surplus supplies, to other City officials, if such delegation is deemed necessary for the effective procurement or disposal of those items.

Section 3 - Procurement Methods and Procedures

I-2-3.01 – Selection of Solicitation Method

The City shall where practicable engage in competitive procurement. The Purchasing Agent shall use the following solicitation methods under the circumstances described below:

(a) Purchases which are estimated not to exceed ten thousand dollars may be made without a competitive procurement method.
(b) Request for quotes process shall be used for purchases with an estimated value of more than ten thousand dollars and no more than fifty thousand dollars.
(c) Request for proposals process shall be used for purchases of services with an estimated value of more than fifty thousand dollars and for supplies, materials and equipment when the Purchasing Agent determines that it is in the best interest of the City to do so.
(d) Request for qualifications process may only be used for purchases of professional services with an estimated value of more than fifty thousand dollars.
(e) Formal bidding process shall be used for purchases of supplies, materials and equipment with an estimated value of more than fifty thousand dollars or for services when the Purchasing Agent determines that it is in the best interest of the City to do so.

I-2-3.02 - Split Orders

It is a violation of the Ordinance to divide the purchase of supplies or general services into smaller orders for the purpose of evading the competitive solicitation requirements of this Chapter.

I-2-3.03 - Procurements where competitive methods are not practicable

The City is not required to engage in competitive procurement under the following circumstances:

(a) Emergency authority of Purchasing Agent pursuant to Section I-2-3.04
(b) Public agency purchases pursuant to Section I-2-3.05
(c) Sole source procurements pursuant to Section I-2-3.06
(d) As authorized by the City Council to be in the best interest of the City

I-2-3.04 - Emergency Authority of Purchasing Agent

3.04-1 Precluding action by the City Council, the Purchasing Agent may authorize emergency purchases without observing the bidding procedures set forth in this Chapter upon a finding that such purchases are required to prevent or mitigate the loss or impairment of life, health, property, or essential public services and that there is sudden, unexpected occurrence that poses a clear and imminent danger. The Purchasing Agent may purchase supplies or services, even though the amount thereof may exceed Fifty Thousand Dollars ($50,000), without competitive bids upon notice.

3.04-2 Not later than seven (7) days after the emergency action, or at the next succeeding City Council meeting if that meeting will occur not later than 14 days after the action, the Purchasing Agent shall submit to the City Council a written statement of the circumstances of such emergency purchase over Fifty Thousand Dollars ($50,000), a description of the supplies or services purchased, and the prices thereof.

3.04-3 The City Council shall continue to review the emergency action at every subsequent regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless the Purchasing Agent has terminated the action prior to the City Council reviewing the emergency action.

I-2-3.05 – Public Agency Purchases

The Purchasing Agent may without observing the competitive procurement requirements prescribed by this Chapter:

(a) Purchase or acquire any supplies, materials or equipment or services from any public or governmental body or agency; or

(b) Joint purchasing agreements entered into by the City and one or more public agencies wherein the City is included as a potential purchaser under a competitive procurement process engaged in pursuant to the joint agreement; or
(c) The Purchasing Agent may arrange for the City to enter into purchase contracts with a supplier or contractor for the purchase of supplies or services, the pricing and terms of which have been previously established by another public agency or improved pricing and terms, provided that the Purchasing Agent determines that such purchase contracts are in the City's best interest; or
(d) The Purchasing Agent may purchase supplies and services without complying with the quotation or bidding requirements of this Chapter, if such purchases are based on an agreement or entered into by any public agency or cooperative purchasing program utilizing public agency procurements as the basis for contracts offered, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that:
    i. The underlying purchase was made using competitive negotiation or procurement procedures, and may include a nationally bid cooperative contract; and
    ii. The public agency is a "public agency" as defined in Government Code section 6500.

I-2-3.06 - Sole Source Procurement

A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination and the period of the sole source approval shall be placed in the contract file.

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year including the name of the department, description of the product or general service, vendor, and dollar amount.

I-2-3.07 – Request for Quotes (RFQ) Procedure

(a) The Purchasing Agent shall issue a Request for Quotes indicating the basis of award through the City's e-procurement system and vendors known to be able to provide the supplies and services and base the award of the contract, whenever possible, on at least three (3) quotations.
(b) Responses must be in writing as instructed in the Request for Quotes.
(c) If no responsive quote is received after issuance of a Request for Quotes, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

I-2-3.08 - Formal Bid Procedures

(a) A notice of invitation for bid shall include a general description of the supplies, equipment or services to be purchased, state where the bid forms and specifications may be secured and state the final deadline and method for submitting bids. Notice shall be given as provided in Section I-2-3.11.
(b) Bidders shall submit electronic bids through the City's eProcurement System per the instructions in the bid documents. Any bid may be withdrawn by a written request signed by the bidder and received by the Purchasing Agent prior to the final time and date for the receipt of bids.
(c) Bids shall be opened at the time and date indicated in the bid document. A tabulation of all bids received shall be delivered to all registered bidders via the eProcurement System within 72 business hours after the bid opening. A tabulation of all bids received shall be made available on the City's eProcurement System or website for a period of not less than 30 calendar days after the award of the bid.
(d) The Purchasing Agent or City Council shall have the discretion to reject any and all bids presented and re-advertise for bids.
(e) The bid shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, hire, or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

I-2-3.09 - Request for Proposals (RFP) Procedure

3.09-1 The Purchasing Agent shall be authorized to utilize the request for proposal method for purchase of supplies or services upon a determination by the Purchasing Agent that the use of competitive bidding is not practical or advantageous to the City because of one (1) or more of the following considerations:

(a) Price is not a primary consideration;
(b) The ability of the bidder to perform the contract or provide the service promptly, or within the time specified, without delay or interference;
(c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
(d) The quality of performance of previous contracts or services;
(e) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical supplies or services;
(f) Delivery and installation, post-sale service or maintenance, reliability, warranties or availability of replacements, are overriding in relation to price or need to be evaluated in relation to prices;
(g) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
(h) The need to evaluate the utilization of a fixed-price or cost-type contract;
(i) The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
(j) The number and scope of conditions attached to the Solicitation.

3.09-2 Receipt of Proposals.

No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing bidders during the process of negotiation. A register of proposals shall be prepared containing the name of each bidder. The register of proposals shall be open for public inspection only after contract award.

3.09-3 Evaluation Factors.

The request for proposals shall state evaluation factors, which shall be considered the primary basis for evaluating the proposals.

3.09-4 Discussion with Responsible Bidders and Revisions to Proposals.

Discussions may be conducted with responsible bidders who submit proposals determined to be reasonably possible of being selected for award, for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.09-5 Award.

Award shall be made to the responsible bidder whose proposal is determined in writing to be the most advantageous to the City, taking into consideration, price, value and the evaluation factors set forth in the request for proposals.

3.09-6 Rejection.

Without limitation to the applicability of any other provisions of this Chapter, the Purchasing Agent or City Council may reject any and all proposals.

I-2-3.10 - Request for Qualifications (RFQa) Procedure

3.10-1 The Purchasing Agent shall be authorized to utilize the request for qualification method for purchase of professional services upon a determination by the Purchasing Agent that the use of competitive bidding is not practical or advantageous to the City because of one (1) or more of the following considerations:

(a) Price is not part of the scoring criteria;
(b) For establishing a pool of qualified bidders;
(c) The ability of the bidder to provide the service promptly, or within the time specified, without delay or interference;
(d) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
(e) The quality of performance of previous services;
(f) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical services;
(g) The sufficiency of the financial resources and ability of the bidder to provide the service;
(h) The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
(j) The number and scope of conditions attached to the Solicitation.

3.10-2 Receipt of Statements of Qualifications.

No statements of qualifications ("SOQs") shall be handled so as to permit disclosure of the contents of any SOQs to competing bidders during the process of negotiation. A register of SOQs shall be prepared containing the name of each bidder. The register of SOQs shall be open for public inspection only after contract award.

3.10-3 Evaluation Factors.

The request for qualifications shall state evaluation factors, which shall be considered the primary basis for evaluating the SOQs.

3.10-4 Discussion with Responsible Bidders and Revisions to SOQs.

Discussions may be conducted with responsible bidders who submit SOQs determined to be reasonably possible of being selected for award, for the purpose of cost, clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.10-5 Award.

Award shall be made to the responsible bidder whose SOQ is determined in writing to be the most advantageous to the City, taking into consideration value and the evaluation factors set forth in the request for qualifications.

3.10-6 Rejection.

Without limitation to the applicability of any other provisions of this Chapter, the Purchasing Agent or City Council may reject any and all SOQs.

I-2-3.11 – Noticing of Solicitations for estimated Purchase of more than $50,000

For purchases with an estimated value of more than $50,000, where notice is required, notice shall be given by one or more of the following methods:

(1) Publishing notice in a newspaper of general circulation within the City on at least one occasion at least five days prior to the date set for the final receipt of bids. Provided, that publication may be made in any newspaper of general circulation in Santa Clara County which the Purchasing Agent shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.
(2) Posting on the City of Milpitas website at least five days prior to the date set for the final receipt of bids.
(3) Through direct electronic notification via the City's eProcurement System.
(4) Any other manner of notice required by law for the particular goods or services to be purchased.

Nothing in this section shall prohibit the City from notifying prospective firms of solicitations by electronic means, and nothing in this section shall prohibit the City from notifying prospective firms who are not in the City's Vendor Database.

The notice shall include a general description of the goods or services to be purchased or City property to be disposed; date, time and place of bid opening; and whether bonds will be required. The notice shall also include such information as to the proposed purchase or disposal as the Purchasing Agent deems sufficient to comply with relevant State law, regulation or City ordinance.

I-2-3.12 – Use of "or equals" in specifications and testing of "equals"

(a) Any reference to a specific brand name followed by the term "or equal" in specifications is illustrative only. A reference to a brand name or equal describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.
(b) A bidder may offer an equivalent ("or equal") in response to a brand name or equal reference. When an "or equal" is offered, the City may test and evaluate the product prior to award of the contract and the City determines if “an equal” offered meets the specification.
(c) At bidder's expense, bidder bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal" at bidder's expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.
(d) If the City rejects a response or part of a response containing any "or equal," the Purchasing Agent shall determine the decision in writing.

I-2-3.13 - Contracting for Consultants

3.13-1 Consultants are required for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill. Their numbers (in relation to a particular skill or expertise required) are comparatively limited. Where consultants are involved, the bidding process is not likely to result in a lower price to the City or eliminate unnecessary expense or delay. However, the request for proposals (RFP) process established in Section I-2-3.09, the request for qualifications (RFQa) process established in Section I-2-3.10, or a similar process based on evaluating consultant qualifications, is better suited.

3.13-2 Architects, Engineers and Land Surveyors.

In addition to the provisions of paragraph 3.13-1 of this section, the following requirements shall be applicable to the selection of architects, engineers and land surveyors.

(a) The requesting department or division head shall negotiate a contract with the firm that possesses the demonstrated competence and professional qualifications for the required architectural, engineering and land-surveying services.
(b) Should the requesting department or division head be unable to negotiate a satisfactory contract with the firm considered to be competent and qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The requesting department or division head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the requesting department or division head shall formally terminate negotiations. The requesting department or division head shall then undertake negotiations with the third most qualified firm.
(c) Should the requesting department or division head be unable to negotiate a satisfactory contract with any of the selected firms, the requesting department or division head shall select additional firms in order of their competence and qualifications and continue negotiation until an agreement is reached.

I-2-3.14 - Standardization

3.14-1 Where the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the City, or that cost savings have been demonstrated, standardization of supplies, materials or equipment, including information and communication technology products and services, for purchase

or to be used in a public works project, shall be considered. The specifications may stipulate a single brand or trade name. Among the factors that may be considered in determining to standardize on a single brand or trade name are that:

(a) In order to acquire a specific product(s) for the purpose of conducting a field test or experiment to determine the product's suitability for use by the City.
(b) When it is required for proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.
(c) In order to achieve significant cost savings based upon consideration of the following cost factors:
    1. Timeliness and quality of installation, repair and maintenance;
    2. Quality of user training;
    3. Supplies and replacement parts;
    4. Modification of existing equipment, materials or systems;
    5. Future upgrades and updates;
    6. Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the product which is the subject of the standardization determination.
    7. Administrative costs.

3.14-2 The Purchasing Agent's written decision shall state the facts reviewed in arriving at the decision, the reasons for the decision, the period of time for which it is valid for making purchases and under what conditions it must be reviewed for possible revision. A copy of the Purchasing Agent's decision shall be attached to any report to the City council seeking approval of a purchase under this section.

3.14-3 Available Competition.

When there is more than one (1) source for the standardized supply or service, competitive procurement in accordance with Sections I-2-3.07, I-2-3.08 and I-2-3.09 is required.

3.14-4 Annual Report.

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council a list of all standardizations approved during the past fiscal year including the product, manufacturer, and reasons for the standardization as authorized in this section.

I-2-3.15 - Local Purchasing Preference

3.15-1 Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall be applicable to the following types of purchases or contracts executed in excess of Ten Thousand Dollars ($10,000) and pursuant to either a formal or an informal bid:

(a) Purchases or contracts for the purchase of supplies, materials and equipment; and
(b) Purchases or contracts for services that are not otherwise of the kind contemplated by Section I-2-3.13.

3.15-2 Exceptions to the Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall not be applicable to the following types of purchases or contracts:

(a) Purchases or contracts for professional services of the kind contemplated by Section I-2-3.13;
(b) Public works contracts;
(c) Emergency purchases made pursuant to Section I-2-3.04;
(d) Sole source purchases made by the Purchasing Agent pursuant to Section I-2-3.06;
(e) Public Agency purchases made by the Purchasing Agent pursuant to Section I-2-3.05;
(f) Purchases or contracts where legal constraints on the expenditure of funds prohibit the application of the local preference or those contracts funded by the federal or state government, including federal or state grant funding, when such funding would be jeopardized by application of the local preference.

3.15-3 Reduction of Bid by Eligible Local Provider; Procedure for Applying the Local Preference.

In contracting for, supplies or services as specifically set forth in this section, the City shall grant preference to a local provider who submits a bid within ten percent (10%) of the lowest responsible bidder and who is otherwise responsive and responsible to the invitation for bids, which preference shall allow the local provider the opportunity to reduce its bid to an amount equal to the amount of the lowest responsible bid, if the lowest responsible bid is submitted by other than an Eligible Local Provider. In the event an Eligible Local Provider reduces its bid to the amount of the lowest responsible bid, the Eligible Local Provider shall be deemed to have provided the lowest responsible bid and shall be awarded the contract.

(a) The preference and opportunity to reduce the amount of the bid shall be provided first to the lowest Eligible Local Provider and, if not accepted by such Eligible Local Provider within five (5) business days of the opening of the bids, then to each successive Eligible Local Provider who is within ten percent (10%) of the lowest responsible bid, in ascending order of the amount of the bids.
(b) The local provider shall certify under penalty of perjury, as a part of its bid and in a form and manner as required by the City, that the bidder qualifies as a local provider. The preference established in this section shall be waived if the certification does not appear on the respective bid.

3.15-4 No Exemption from Local Sales Tax.

The application of a local preference as set forth in this section shall not exempt any Eligible Local Provider to which a contract is executed or awarded from having to pay all applicable federal, state or local sales tax.

I-2-3.16 - Recycled Product Procurement

3.16-1 The City of Milpitas is committed to the conservation and protection of state and local resources; therefore, bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The Purchasing Agent shall purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to or better than that of non-recycled products.

(a) The City shall require contractors and consultants to use environmentally preferable products, and use products manufactured with the maximum practicable amount of post-consumer material, whenever cost effective and to the extent practicable.
(b) The City shall ensure that they and their contractors use both sides of paper sheets whenever practicable.
(c) To the extent possible, the recycled product preference cost shall apply to the bids where the City has made multiple awards, so as to maximize the dollar participation of firms offering recycled products.
(d) To the extent possible, all printing contracts made by the City shall specify that the paper used shall meet the recycled content requirement of thirty percent (30%) postconsumer fiber.
(e) The City may specify recycled content at levels higher than the minimum content standards.

3.16-2 Where the use of recycled products is designated, the Purchasing Agent shall:

(a) Maintain a list of designated recycled products that contain a practicable amount of recovered material and are consistent with State and Federal guidelines and coordinate with all departments to purchase environmentally preferable products whenever practicable.
(b) Where the contract is competitively solicited, grant the supplier of recycled products with a minimum of 10% recycled content in its product(s) a preference of ten percent (10%) based on the bid or price quoted by supplier of recycled products when determining the lowest responsive and responsible or highest ranked bidder depending upon procurement process used.
(b) Inform Departments of processes and procedures that are environmentally preferable in order to facilitate their evaluation and use by the Departments whenever practicable.
(c) Monitor contracting procedures to ensure that they do not discriminate against recycled products without justification, and that they maximize the specification of designated recycled products whenever practicable.

I-2-3.16 – Testing and Inspection of Samples

3.16-1 The Purchasing Agent may require vendors to provide samples to be tested and inspected as part of the applicable procurement process. The Purchasing Agent shall have the authority to require chemical, physical, or other tests of samples submitted with bids which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Purchasing Agent shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the bidder's expense.

I-2-3.17 - Waiver of Informalities: Rejection of Responses

Where the Purchasing Agent or City Council are required to make purchases upon competitive solicitations, said Purchasing Agent or City Council may waive any informalities or minor irregularities related to the procurement process, solicitation documents or responses or may reject any and all responses (anything herein contained to the contrary notwithstanding) if said Purchasing Agent or City Council deems said rejection to be in the best interests of the City. Said rejection shall be at the sole discretion of the Purchasing Agent or City Council, as the case may be. Upon rejection of responses, the Purchasing Agent or the City Council, as the case may be, may:

(1) Give subsequent notice for a new competitive solicitation;
(2) Postpone said purchase or disposal definitely or indefinitely; or
(3) Elect to make the purchase without competitive solicitation, upon notice (and as if a competitive solicitation, upon notice, had not been required in the first instance) in accordance with the authority granted by the various subsections of this section.

I-2-3.18 – Insurance and Bonds

(a) The Purchasing Agent is authorized to require vendors to provide insurance and surety bonds for contracts. Where required, the bidder shall submit insurance or surety bonds, or both, acceptable to the City.
(b) Where required by the Purchasing Agent, all responses to solicitations shall include such bidders' security as is required by the solicitation documents and shall be presented under sealed cover. If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the bidders' security may be declared forfeited by the Purchasing Agent to the City, and any bonds so forfeited may be prosecuted and collected and the amount of the security paid into the general fund. Unsuccessful bidders shall be entitled to return of their bidders' security. The form and amount of such security shall be described in the notice inviting responses or in the specifications referred to therein.
(c) To secure faithful performance of the contract, the Purchasing Agent is authorized to require security in the form of cash, cashier's check, certified checks, or corporate faithful performance bonds, in such amount as the Purchasing Agent shall deem reasonably necessary to protect the best interests of the City. If the Purchasing Agent requires such security, the form and amount thereof shall be described in the notice inviting responses or in the specifications referred to therein. Unless otherwise required by law or the funding source, the Purchasing Agent need not require such security if the Purchasing Agent does not deem such to be reasonably necessary to protect the best interest of the City, or if the Purchasing Agent believes the interests of the City are best served by not requiring the same.

I-2-3.19 – Protest Procedure

3.19-1 Any interested party may file a protest to a proposed award of a contract in an amount over Ten Thousand Dollars ($10,000). The protest shall be filed with the Purchasing Agent in writing no later than seven (7) calendar days after the posting of the intent to award and shall set forth the basis for the protest and any proposed remedy.

3.19-2 The Purchasing Agent will review the protest as soon as possible and will provide a written response to the protestor. The Purchasing Agent's decision on a bid protest for a procurement in an amount no more than Fifty Thousand Dollars ($50,000) shall be final.

3.19-3 For procurements having a value of more than Fifty Thousand Dollars ($50,000), the City Council will consider the protest and take action thereupon, which action shall be final.

I-2-3.20 - Public Works Contract Purchasing Procedures

3.20-1 Definitions.

For the purposes of this Section I-2-3.20 the following words and phrases shall have the following meanings:

1. Act means the Uniform Public Construction Cost Accounting Act (California Public Contracts Code section 22000 et seq.).
2. Commission means the California Uniform Construction Cost Accounting Commission.
3. Facility means any plant, building, structure, ground facility, utility system, subject to the limitation of subsection 4 of the definition for public project below, real property, streets and highways, or other public works improvement.
4. Public project has the meaning assigned to it under Public Contract Code section 22002, as it may be amended from time to time.

3.20-2 Public Project Contracting Procedures.

The City shall follow the contracting procedures set forth in Article 3 of Act (Public Contract Code section 22030 et seq.). The City shall procure public projects by force account, negotiated contract, purchase order, informal bidding or formal bidding as required in accordance with the applicable dollar amount limitations under Section 22032 of the Act, as it may be amended from time to time.

3.20-3 Contractors List.

The Directors of Engineering and Public Works, in coordination with the City's Purchasing Agent, shall compile and maintain a list of qualified contractors identified according to categories of work. This list shall comply with the requirements of Section 22034 of the Act and the criteria promulgated, from time to time, by the Commission.

3.20-4 Informal Bidding - Notice.

(a) When a public project is to be performed which qualifies for informal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
    (1) Mailed notice shall be sent to all contractors on the contractors list for the category of work being bid; and
    (2) Mailed notice shall be given to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County; and
    (3) Additional notice to other contractors and/or trade journals may, in the discretion of the City, be given.
(b) If the product or service to be acquired is proprietary in nature such that it can only be obtained from a certain contractor or contractors, notice inviting bids may be sent only to such contractor or contractors.
(c) All mailing of notices to contractors and construction trade journals shall be completed not less than ten days before bids are due.
(d) The notice shall describe the project in general terms, how to obtain more detailed information about the project and shall state the time and place for submission of bids.

3.20-5 Formal Bidding—Notice.

(a) When a public project is to be performed that requires formal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
    (1) The notice shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.
    (2) The notice shall be published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the City; or, if there is no newspaper printed and published within the jurisdiction of the City, in a newspaper of general circulation which is circulated within the City.

(3) The notice inviting formal bids shall also be mailed to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County. The notice shall be mailed at least 15 calendar days before the date of opening the bids.

3.20-6 Award of Contracts.

The City Manager is authorized to award contracts for public projects of less than or equal to one-hundred thousand dollars.

3.20-7 Rejection of Bids.

The City Manager or the City Council, as the case may be, may, in the Manager's or Council's discretion, reject all bids and proceed as authorized by the Act.

3.20-8 Approval of Plans and Designs.

The City Engineer, or designee, is authorized to approve plans and designs, and all amendments and addenda thereto, for performance of a public project of the City.

I-2-3.21 - Authority to Modify Contracts Awarded by City Council

The Purchasing Agent is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any amendment or change order to a supply or service contract previously approved by the Council within the following guidelines:

(a) To extend the term of the contract, at the recommendation of the Requesting Department, for a period not to exceed twelve (12) consecutive months from the last Council-approved expiration date;
(b) To make minor revisions to the scope of services or schedule;
(c) To make clerical corrections; or
(d) The Purchasing Agent may also approve and sign assignments of contracts previously approved by the City Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.

All modifications to contracts, including, but not limited to, changes to the scope of the work, quantity of goods, price or term shall be made in writing and approved by the Requesting Department. Amendments or change orders are permitted only if the modification would not cause the contract to exceed the monetary limits defined below:

Contract Amount	Individual Change Order Authority	Cumulative Change Order Authority
Less than or equal to$100,000	10% of Award or $10,000 whichever is less	15% of Award or $15,000 whichever is less
Over $100,000	10% of Award or $20,000 whichever is less	15% of Award or $40,000 whichever is less

All contract changes must be reflected on the Purchase Order and/or contract amendment. All other changes outside the parameters defined in this section must be approved by the City Council.

Section 4 - Purchase Orders

I-2-4.01 – Purchase Order Requirement.

Except as otherwise approved by the Purchasing Agent or pursuant to Section I-2-2.03, no contract award for supplies or services shall be deemed to be an authorization to proceed with provision of the supplies or services until a purchase order is appropriately authorized and issued.

I-2-4.02 – Issuance of Purchase Orders.

Upon ascertaining the price to be paid for supplies or services, the Purchasing Agent shall issue a purchase order. The Purchasing Agent shall forward the original purchase order to the vendor, retaining one (1) copy for his purchase order file. He shall likewise forward one (1) copy of the purchase order to the requesting department to be used as a receiving report.

I-2-4.03 - Sufficient Funds Must be Available.

No purchase order shall be issued until it has been ascertained that there is to the credit of the requesting department a sufficient unencumbered appropriated balance in excess of all unpaid obligations to defray the amount of such order.

Section 5 - Receipt of Goods and Services

I-2-5.01 - Department Head Responsible for Checking Quality and Contract Management.

Upon receipt by any Department of supplies or services, the Department head or designee, shall be responsible for the making of a careful check of the quality, condition, and quantity of goods received against a copy of the purchase order and the packing list, when applicable, or services rendered as specified in the contract.

I-2-5.02 - Department Head Responsible for Checking Invoice.

The Department head or designee, upon receipt of a vendor's invoice, shall check the invoice for correctness of quantities, unit prices, price extensions, discounts, transportation, allowances, services rendered, hourly rates etc. When applicable, the Department head or designee shall compare the same with the purchase order and packing list. Approved invoices shall be forwarded to Accounts Payable for payment processing.

Section 6 - Inspections

I-2-6.01 - Department Head's Inspection.

The Department head or designee shall inspect, or cause to be inspected, all deliveries of supplies or services to determine their conformance to specifications. The Department head or designee shall have the authority to require chemical, physical, or other tests of samples of deliveries which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Department head or designee shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the vendor’s expense.

Section 7 - Disposal of City Property

I-2-7.01 - Disposal of Property with an Estimated Value of Five Thousand Dollars ($5,000) or Less.

Except as otherwise provided by State law or City ordinance, the Purchasing Agent or designee shall be empowered to dispose of property of the City, including abandoned property, which cannot be used by any department of the City, at public or private sale or by renting or destroying the same, (all with or without notice, competitive bid or necessity of posting bid bonds, at the Purchasing Agent or designee's discretion, and upon such terms as he or she deems best) provided any single item of property involved does not exceed Five Thousand Dollars ($5,000) in estimated current market value.

I-2-7.02 – Deposit.

The Purchasing Agent or designee may, in his or her discretion, require that a deposit in the amount of the bid or any fraction thereof accompany each bid upon the disposal of City property.

I-2-7.03 - Disposal of Property with an Estimated Value of More Than Five Thousand Dollars $5,000.

In the event that the estimated value of any single item of property exceeds Five Thousand Dollars ($5,000) in current market value, the City Council may, upon notice, empower the Purchasing Agent to dispose of it (in accordance with the same terms and conditions and subject to the same discretion and limitations as if it were estimated at Five Thousand Dollars ($5,000) or less in value). Alternatively, the City Council may elect to sell, rent or destroy the same in accordance with whatever provisions, terms and conditions the City Council may elect.

I-2-7.04 - Retired K-9 Units and Firearms.

Notwithstanding the other provisions of this Chapter, the City Manager or designee is authorized to determine the disposition of:

(a) police service dogs including:
  (1) sale or donation of the police service dog to the assigned police officer when the officer leaves the canine unit or if the police service dog can no longer perform its required duties;
  (2) the original supplier; or
  (3) any other method that best serves the interests of the City; and
(b) surplus firearms including:
  (1) sale or donation to a law enforcement agency;
  (2) sale to an authorized firearms retailer;
  (3) sale or donation to an active or retired sworn member of the police department consistent with the Memorandum of Understanding between the City and the Milpitas Police Officers Association; or
  (4) destruction if no safe alternative is available.

Section 8 – Claims

I-2-8.01 - Filing of Claims.

Claims for loss, damage, breakage, shortage or otherwise, claims for refund, claims for adjustment, and claims for insurance or other indemnity shall be made promptly by the Purchasing Agent.

Section 9 - Ethics in Public Purchasing

I-2-9.01 - Ethics in Public Purchasing.

Every employee participating in the procurement, management, storage, and use of supplies or services purchased by the City for its benefit shall adhere to the following principles:

(1) City employees shall not obligate the City, financially or otherwise, by any means, including, but not limited to, purchase orders and contracts, when the employee has a personal, material, financial, or other interest in the obligation.
(2) City employees shall not accept any form of gratuities.
(3) City employees may not accept discounts, reward points, sales, reduced prices, or other benefits offered for personal purchases by suppliers because of employee's relationship with the City.
(4) City employees shall be personally liable for any unauthorized procurements.

Section 10 - Severability

I-2-10.01 – Severability.

If any provisions of this Chapter or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Chapter that can be given effect without the invalid provisions or application, and to this end, the provisions of this Chapter are declared to be severable.

Section 11 - Exclusions from Chapter

I-2-11.01 - Exclusions from Chapter.

The provisions of this Chapter shall not apply to items that typically cannot be bid or that the City Council has chosen to exclude from bidding. The following list is exemplary of these types of items and/or services but is not intended to be all inclusive.

11.01-1 To franchises governed by the provisions of the California Public Utilities Code or other statute of the State of California;

11.01-2 Where State or Federal law requires a different procedure;

11.01-3 To franchises, rights, privileges, licenses and permits granted by the City of Milpitas (including, but not limited to, franchises, rights and privileges granted for refuse disposal under Title V, Chapter 200 of the Milpitas Municipal Code and the Cable Franchise under Title III, Chapter 22 of the Milpitas Municipal Code;

11.01-4 To the purchase of insurance;

11.01-5 To the purchase of art;

11.01-6 To the leasing, purchase or sale of land or any interest therein;

11.01-7 To the hiring of or contracting for personnel (whether as temporary, seasonal or permanent employees, agents or independent contractors);

11.01-8 To the purchase of utilities, including, but not limited to telephone service, gas, electricity or water;

11.01-9 To the purchase of securities for the City's investment portfolio subject to the City's investment policy.

11.01-10 To the payments of debt service and bond indebtedness; arbitrage compliance; refunds of deposits; payments and/or pass through of collections on behalf of other governmental agencies; budget approved memberships and dues; authorized Community Development Block Grants (CDBG); memorandum of understanding obligations; budget approved contributions to not-for-profit organizations; United States Postal Service postage; City Council approved grant programs; employee travel expenses.

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.

PLEASE NOTE:

This copy of Ordinance No. 23.15 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 23.15

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTERS 2 (PURCHASING) AND 310 (OPEN GOVERNMENT ORDINANCE) OF TITLE I (ADMINISTRATION) OF THE MILPITAS MUNICIPAL CODE RELATING TO PURCHASING

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of December 1, 2020, upon motion by Councilmember Phan, 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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
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 supports all City Departments to procure and contract for goods and services while ensuring fair and open competition consistent with the Municipal Code; and

WHEREAS, the City studied its procurement function including process mapping to streamline procurement processes and reducing administrative costs while ensuring competitive pricing; and

WHEREAS, on March 16, 2020, the County of Santa Clara ordered residents to shelter-in-place ("Shelter-In-Place Order") in response to the COVID-19 pandemic; and

WHEREAS, the Shelter-in-Place Order accelerated the streamlining of operations through online approval of contracts using DocuSign, implementation of the contract management database for contracts originating from the Purchasing Division including automatic notification for renewal of contracts and insurance, and online payment for Procurement Card (P-Card) purchases; and

WHEREAS, further streamlining while ensuring fair and open competition and competitive pricing is dependent on updating the Purchasing Ordinance; and

WHEREAS, on September 1, 2020, the City Council approved the COVID-19 Fiscal Response Strategies and Guidelines; and

WHEREAS, the City Manager was directed to follow these fiscal strategies and guidelines to ensure an effective response to the economic crisis and related impact on the City's finances caused by COVID-19, while minimizing service cuts to our community; and

WHEREAS, one of these fiscal strategies and guidelines directs the City Manager to identify and bring forward for Council consideration City policy and ordinance changes, as applicable, that would enable/facilitate service delivery improvements; and

WHEREAS, the primary recommended changes to the City's Purchasing Ordinance include updating procurement methods and procedures, increasing bidding thresholds and related contract amendment authority, establishing annual reporting requirements and deadlines for sole source purchases and standardization of equipment, changing definitions, and aligning the Purchasing Ordinance with existing practices.

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 I, CHAPTER 310

Title I (Administration), Chapter 310 (Open Government Ordinance), Section 3.70 (Public Information that Must be Disclosed) of the Milpitas Municipal Code is hereby amended to read as follows:

I-310-3.70 - Public Information that Must be Disclosed

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda. No preliminary draft or memorandum shall be exempt from disclosure under Government Code section 6254, subdivision (a) if it is normally kept on file. Preliminary drafts and memoranda concerning contracts, memoranda of understanding, or other matters subject to negotiation or pending Council approval shall not be subject to disclosure to this provision until final action has been taken.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this chapter:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any Milpitas governmental ethics code, or this Chapter.

(2) Unless otherwise privileged under California law, when litigation is adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Contracts, Bids and Proposals.

(1) All initial City Requests for Proposals ("RFP's") shall be kept in a central repository and shall be made available for public inspection. In addition, RFP's shall be placed on the City's website for a period from the date the RFP was issued to the date that the RFP is due.

(2) Contracts, contractors' bids, responses to requests for proposals and all other records of communication between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to an RFP has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of an RFP has been completed.

(3) During the course of negotiations for:

(i) Personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) Leases or permits having total anticipated revenue or expense to the City;

(iii) Any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five (5) working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying.

(d) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(e) Appraisals, offers and counteroffers relating to the City's purchase of real property are exempt until an agreement is executed. If an agreement for purchase is not submitted to the Council for approval then this exemption expires 1 year after negotiations are terminated.

(f) Neither the City nor any officer, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 2

Title I (Administration), Chapter 2 (Purchasing) of the Milpitas Municipal Code is hereby amended to read as follows:

Chapter 2 - PURCHASING

Sections:

Section 1 - Purpose and Application: Definitions

I-2-1.01 - Purpose

The purpose of this Purchasing Ordinance is to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

I-2-1.02 - Application

Except as otherwise provided herein, this Chapter applies to contracts for the procurement of supplies and services entered into by the City. When the procurement involves the expenditure of federal assistance, contract, or grant funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. Nothing in this Chapter shall prevent the City and any City affiliated agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

I-2-1.03 - Definitions

The words defined in this section shall have the meanings set forth below whenever they appear in the Purchasing Ordinance, unless the context in which they are used clearly requires a different meaning; or, a different definition is prescribed for a particular section or provision.

1. BIDDER. Any person who submits a response to a competitive City solicitation.
2. BUSINESS. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
3. CITY. The City of Milpitas and City affiliated agency.
4. CONTRACT. All types of City contracts, agreements, or purchase orders with the exception of public works contracts, for the procurement of supplies and services or the disposal of surplus supplies.
5. CONTRACT MODIFICATION. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract.
6. CONTRACTOR. Any person having a contract with the City.
7. DATA. Any recorded information, regardless of form or characteristic.
8. ELECTRONIC. Any electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
9. ELIGIBLE LOCAL PROVIDER. Any local provider who is an otherwise responsible bidder and otherwise responsive to a City's competitive solicitation.

10. ENVIRONMENTALLY PREFERABLE PRODUCTS OR MATERIALS. Any products or materials contained in the products that have a reduced negative effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials' acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product.
11. GENERAL SERVICES. The furnishing of goods and services by a vendor that does not typically require a license, certification or other professional criteria to perform the work. This includes services such as equipment maintenance, janitorial, printing, landscaping and refuse disposal.
12. GRANT. Any furnishing of funds by an outside agency or other organization to support a program authorized by law.
13. LOCAL PROVIDER. A supplier or provider of equipment, materials, supplies or services which has an established place of business within the City of Milpitas, which has a City of Milpitas business license, which has paid all currently due business license fees and taxes, and which began doing business within the City of Milpitas at least one (1) year prior to the City's inviting bids or quotations for the respective purchase.
14. PERSON. Any business, individual, union, committee, club, other organization, or group of individuals.
15. POST-CONSUMER MATERIAL OR PRODUCT. Any material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item, including any waste material and by-products which have been recovered or diverted from solid waste.
16. PROCUREMENT. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection, and solicitation of sources, preparation and award of contract and contract administration.
17. PROFESSIONAL SERVICES. Services, generally of an intangible nature that typically require a license, certification, and/or other professional criteria to perform the work as defined by the laws of the State of California including, but not limited to, Architect, Engineer, Land Surveyor, Attorney, Public Accountant as well as information technology services such as installation and implementation of information technology projects, software licensing and maintenance, and Software as a Service (SaaS).
18. PROVIDER. The terms bidder, supplier, contractor, vendor or provider, may be used interchangeably and shall refer to the person, company, or corporation from whom the City of Milpitas purchases supplies or services or with whom the City enters into a contract.
19. PUBLIC AGENCY. A public agency is defined as any school district, City, state, federal agency, U.S. Communities program or other nonprofit association or group consisting of governmental entities.
20. PUBLIC NOTICE. The distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods shall often include, but are not limited to, publication in newspapers of general circulation, posting in public places, electronic or paper notices to prospective bidders, and posting on web pages designated by the City for that purpose.
21. PUBLIC WORKS CONTRACT. Any City contract for the performance of a "public project" as defined in Public Contract Code section 22002, as it may be amended from time to time.
22. PURCHASING AGENT. The Purchasing Agent, the Director of Finance or his or her designee, or such position designated by the City Manager to administer this Chapter.
23. REQUESTING DEPARTMENT. Any organizational unit of the City of Milpitas that utilizes any supplies or services procured under this Ordinance.
24. RESPONSE. means a bid, proposal, quote, statement of qualification or other communication offered in response to a competitive City solicitation.
25. RESPONSIBLE BIDDER. A bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work.
26. RESPONSIVE BIDDER. A bidder who has complied with the instructions and requirements established by the City and set forth in the City’s solicitation documents.
27. SIGNATURE. Shall be defined as a manual signature affixed in ink or provided through other acceptable means established by law. A faxed or scanned signature is acceptable.
28. SPECIFICATION. Any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

29. SOLICITATION. An invitation for bids or request for proposals, qualifications, quotes, or other document including all documents, whether attached or incorporated by reference, utilized in furtherance of a City procurement of goods or services.
30. SUPPLIES. All property (including, but not limited to, equipment, goods and materials) except as otherwise provided herein.
31. SURPLUS SUPPLIES. Supplies which are worn out, obsolete or unsuitable for City use.
32. WRITING OR IN WRITING. The product of any method of forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Section 2 - Division of Purchasing

I-2-2.01 - Establishment

There is hereby established for the City a Division of Purchasing, headed by a Purchasing Agent, who shall report to the Director of the Finance Department.

I-2-2.02 - Responsibilities

In accordance with this Chapter, the Purchasing Agent shall:

1. Procure or supervise the procurement of all supplies and services needed by the City, except as otherwise provided herein;
2. Award contracts for Fifty Thousand Dollars ($50,000) or less;
3. Amend contracts or purchase orders awarded for amounts of Fifty Thousand Dollars ($50,000) or less as necessary, as long as the total amount of the amended contract does not exceed Fifty Thousand Dollars ($50,000).
4. Sell, trade or otherwise dispose of surplus supplies belonging to the City;
5. Establish and maintain programs for specification development, contract administration and inspection and acceptance, in cooperation with the departments using the supplies and services;
6. Provide ongoing training and support to the City departments pertaining to procurement of supplies or services;
7. Administer contracts with vendors for the purchase of citywide services and supplies such as paper, office supplies, janitorial services and office equipment;
8. Establish and maintain a central vendor database categorized by goods and services;
9. Provide management of the Procurement Card and Single Merchant Credit Card Programs;
10. Adopt operational procedures relating to the execution of any of the above duties and responsibilities.

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) or less. For supplies, materials, and equipment, the department shall use a Procurement Card or submit a Purchase Requisition to Finance for issuance of a Purchase Order. For services with a value greater than One Thousand Dollars ($1,000), the department shall submit a Purchase Requisition to Finance for issuance of a contract and ensure compliance with insurance requirements as promulgated by the Risk Manager.

I-2-2.04 - Delegation

The Purchasing Agent may delegate authority to purchase supplies, or services, and to dispose of surplus supplies, to other City officials, if such delegation is deemed necessary for the effective procurement or disposal of those items.

Section 3 - Procurement Methods and Procedures

I-2-3.01 – Selection of Solicitation Method

The City shall where practicable engage in competitive procurement. The Purchasing Agent shall use the following solicitation methods under the circumstances described below:

(a) Purchases which are estimated not to exceed ten thousand dollars may be made without a competitive procurement method.
(b) Request for quotes process shall be used for purchases with an estimated value of more than ten thousand dollars and no more than fifty thousand dollars.
(c) Request for proposals process shall be used for purchases of services with an estimated value of more than fifty thousand dollars and for supplies, materials and equipment when the Purchasing Agent determines that it is in the best interest of the City to do so.
(d) Request for qualifications process may only be used for purchases of professional services with an estimated value of more than fifty thousand dollars.
(e) Formal bidding process shall be used for purchases of supplies, materials and equipment with an estimated value of more than fifty thousand dollars or for services when the Purchasing Agent determines that it is in the best interest of the City to do so.

I-2-3.02 - Split Orders

It is a violation of the Ordinance to divide the purchase of supplies or general services into smaller orders for the purpose of evading the competitive solicitation requirements of this Chapter.

I-2-3.03 - Procurements where competitive methods are not practicable

The City is not required to engage in competitive procurement under the following circumstances:

(a) Emergency authority of Purchasing Agent pursuant to Section I-2-3.04
(b) Public agency purchases pursuant to Section I-2-3.05
(c) Sole source procurements pursuant to Section I-2-3.06
(d) As authorized by the City Council to be in the best interest of the City

I-2-3.04 - Emergency Authority of Purchasing Agent

3.04-1 Precluding action by the City Council, the Purchasing Agent may authorize emergency purchases without observing the bidding procedures set forth in this Chapter upon a finding that such purchases are required to prevent or mitigate the loss or impairment of life, health, property, or essential public services and that there is sudden, unexpected occurrence that poses a clear and imminent danger. The Purchasing Agent may purchase supplies or services, even though the amount thereof may exceed Fifty Thousand Dollars ($50,000), without competitive bids upon notice.

3.04-2 Not later than seven (7) days after the emergency action, or at the next succeeding City Council meeting if that meeting will occur not later than 14 days after the action, the Purchasing Agent shall submit to the City Council a written statement of the circumstances of such emergency purchase over Fifty Thousand Dollars ($50,000), a description of the supplies or services purchased, and the prices thereof.

3.04-3 The City Council shall continue to review the emergency action at every subsequent regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless the Purchasing Agent has terminated the action prior to the City Council reviewing the emergency action.

I-2-3.05 – Public Agency Purchases

The Purchasing Agent may without observing the competitive procurement requirements prescribed by this Chapter:

(a) Purchase or acquire any supplies, materials or equipment or services from any public or governmental body or agency; or

(b) Joint purchasing agreements entered into by the City and one or more public agencies wherein the City is included as a potential purchaser under a competitive procurement process engaged in pursuant to the joint agreement; or

(c) The Purchasing Agent may arrange for the City to enter into purchase contracts with a supplier or contractor for the purchase of supplies or ~~general~~ services, the pricing and terms of which have been previously established by another public agency or improved pricing and terms, provided that the Purchasing Agent determines that such purchase contracts are in the City's best interest; or

(d) The Purchasing Agent may purchase supplies and services without complying with the quotation or bidding requirements of this Chapter, if such purchases are based on an agreement or entered into by any public agency or cooperative purchasing program utilizing public agency procurements as the basis for contracts offered, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that:

i. The underlying purchase was made using competitive negotiation or procurement procedures, and may include a nationally bid cooperative contract; and

ii. The public agency is a "public agency" as defined in Government Code section 6500.

I-2-3.06 - Sole Source Procurement

A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination and the period of the sole source approval shall be placed in the contract file.

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year including the name of the department, description of the product or general service, vendor, and dollar amount.

I-2-3.07 – Request for Quotes (RFQ) Procedure

(a) The Purchasing Agent shall issue a Request for Quotes indicating the basis of award through the City's e-procurement system and vendors known to be able to provide the supplies and services and base the award of the contract, whenever possible, on at least three (3) quotations.

(b) Responses must be in writing as instructed in the Request for Quotes.

(c) If no responsive quote is received after issuance of a Request for Quotes, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

I-2-3.08 - Formal Bid Procedures

(a) A notice of invitation for bid shall include a general description of the supplies, equipment or services to be purchased, state where the bid forms and specifications may be secured and state the final deadline and method for submitting bids. Notice shall be given as provided in Section I-2-3.1~~0~~1.

(b) Bidders shall submit electronic bids through the City's eProcurement System per the instructions in the bid documents. Any bid may be withdrawn by a written request signed by the bidder and received by the Purchasing Agent prior to the final time and date for the receipt of bids.

(c) Bids shall be opened at the time and date indicated in the bid document. A tabulation of all bids received shall be delivered to all registered bidders via the eProcurement System within 72 business hours after the bid opening. A tabulation of all bids received shall be made available on the City's eProcurement System or website for a period of not less than 30 calendar days after the award of the bid.

(d) The Purchasing Agent or City Council shall have the discretion to reject any and all bids presented and re-advertise for bids.

(e) The bid shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, hire, or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

I-2-3.09 - Request for Proposals (RFP) Procedure

3.09-1 The Purchasing Agent shall be authorized to utilize the request for proposal method for purchase of supplies or services upon a determination by the Purchasing Agent that the use of competitive bidding is not practical or advantageous to the City because of one (1) or more of the following considerations:

(a) Price is not a primary consideration;
(b) The ability of the bidder to perform the contract or provide the service promptly, or within the time specified, without delay or interference;
(c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
(d) The quality of performance of previous contracts or services;
(e) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical supplies or services;
(f) Delivery and installation, post-sale service or maintenance, reliability, warranties or availability of replacements, are overriding in relation to price or need to be evaluated in relation to prices;
(g) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
(h) The need to evaluate the utilization of a fixed-price or cost-type contract;
(i) The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
(j) The number and scope of conditions attached to the Solicitation.

3.09-2 Receipt of Proposals.

No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing bidders during the process of negotiation. A register of proposals shall be prepared containing the name of each bidder. The register of proposals shall be open for public inspection only after contract award.

3.09-3 Evaluation Factors.

The request for proposals shall state evaluation factors, which shall be considered the primary basis for evaluating the proposals.

3.09-4 Discussion with Responsible Bidders and Revisions to Proposals.

Discussions may be conducted with responsible bidders who submit proposals determined to be reasonably possible of being selected for award, for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.09-5 Award.

Award shall be made to the responsible bidder whose proposal is determined in writing to be the most advantageous to the City, taking into consideration, price, value and the evaluation factors set forth in the request for proposals.

3.09-6 Rejection.

Without limitation to the applicability of any other provisions of this Chapter, the Purchasing Agent or City Council may reject any and all proposals.

I-2-3.10 - Request for Qualifications (RFQa) Procedure

3.10-1 The Purchasing Agent shall be authorized to utilize the request for qualification method for purchase of professional services upon a determination by the Purchasing Agent that the use of competitive bidding is not practical or advantageous to the City because of one (1) or more of the following considerations:

(a) Price is not part of the scoring criteria;
(b) For establishing a pool of qualified bidders;
(c) The ability of the bidder to provide the service promptly, or within the time specified, without delay or interference;
(d) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
(e) The quality of performance of previous services;
(f) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical services;
(g) The sufficiency of the financial resources and ability of the bidder to provide the service;
(h) The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
(j) The number and scope of conditions attached to the Solicitation.

3.10-2 Receipt of Statements of Qualifications.

No statements of qualifications ("SOQs") shall be handled so as to permit disclosure of the contents of any SOQs to competing bidders during the process of negotiation. A register of SOQs shall be prepared containing the name of each bidder. The register of SOQs shall be open for public inspection only after contract award.

3.10-3 Evaluation Factors.

The request for qualifications shall state evaluation factors, which shall be considered the primary basis for evaluating the SOQs.

3.10-4 Discussion with Responsible Bidders and Revisions to SOQs.

Discussions may be conducted with responsible bidders who submit SOQs determined to be reasonably possible of being selected for award, for the purpose of cost, clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.10-5 Award.

Award shall be made to the responsible bidder whose SOQ is determined in writing to be the most advantageous to the City, taking into consideration value and the evaluation factors set forth in the request for qualifications.

3.10-6 Rejection.

Without limitation to the applicability of any other provisions of this Chapter, the Purchasing Agent or City Council may reject any and all SOQs.

I-2-3.11 – Noticing of Solicitations for estimated Purchase of more than $50,000

For purchases with an estimated value of more than $50,000, where notice is required, notice shall be given by one or more of the following methods:

(1) Publishing notice in a newspaper of general circulation within the City on at least one occasion at least five days prior to the date set for the final receipt of bids. Provided, that publication may be made in any newspaper of general circulation in Santa Clara County which the Purchasing Agent shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.
(2) Posting on the City of Milpitas website at least five days prior to the date set for the final receipt of bids.
(3) Through direct electronic notification via the City's eProcurement System.
(4) Any other manner of notice required by law for the particular goods or services to be purchased.

Nothing in this section shall prohibit the City from notifying prospective firms of solicitations by electronic means, and nothing in this section shall prohibit the City from notifying prospective firms who are not in the City's Vendor Database.

The notice shall include a general description of the goods or services to be purchased or City property to be disposed; date, time and place of bid opening; and whether bonds will be required. The notice shall also include such information as to the proposed purchase or disposal as the Purchasing Agent deems sufficient to comply with relevant State law, regulation or City ordinance.

I-2-3.12 – Use of "or equals" in specifications and testing of "equals"

(a) Any reference to a specific brand name followed by the term "or equal" in specifications is illustrative only. A reference to a brand name or equal describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.
(b) A bidder may offer an equivalent ("or equal") in response to a brand name or equal reference. When an "or equal" is offered, the City may test and evaluate the product prior to award of the contract and the City determines if “an equal” offered meets the specification.
(c) At bidder's expense, bidder bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal" at bidder's expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.
(d) If the City rejects a response or part of a response containing any "or equal," the Purchasing Agent shall determine the decision in writing.

I-2-3.13~~2~~ - Contracting for Consultants

3.1~~2~~3-1 Consultants are required for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill. Their numbers (in relation to a particular skill or expertise required) are comparatively limited. Where consultants are involved, the bidding process is not likely to result in a lower price to the City or eliminate unnecessary expense or delay. However, the request for proposals (RFP) process established in Section I-2-3.0~~9~~8, the request for qualifications (RFQa) process established in Section I-2-3.1~~0~~9, or a similar process based on evaluating consultant qualifications, is better suited.

3.1~~2~~3-~~2~~3~~2~~ Architects, Engineers and Land Surveyors.

In addition to the provisions of paragraph 3.1~~2~~3-1 of this section, the following requirements shall be applicable to the selection of architects, engineers and land surveyors.

(a) The requesting department or division head shall negotiate a contract with the firm that possesses the demonstrated competence and professional qualifications for the required architectural, engineering and land-surveying services.
(b) Should the requesting department or division head be unable to negotiate a satisfactory contract with the firm considered to be competent and qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The requesting department or division head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the requesting department or division head shall formally terminate negotiations. The requesting department or division head shall then undertake negotiations with the third most qualified firm.
(c) Should the requesting department or division head be unable to negotiate a satisfactory contract with any of the selected firms, the requesting department or division head shall select additional firms in order of their competence and qualifications and continue negotiation until an agreement is reached.

I-2-3.13~~4~~ - Standardization

3.1~~3~~4-1 Where the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the City, or that cost savings have been demonstrated, standardization of supplies, materials or equipment, including information and communication technology products and services, for purchase or to be used in a public works project, shall be considered. The specifications may stipulate a single brand or trade name. Among the factors that may be considered in determining to standardize on a single brand or trade name are that:

(a) In order to acquire a specific product(s) for the purpose of conducting a field test or experiment to determine the product's suitability for use by the City.

(b) When it is required for proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.

(c) In order to achieve significant cost savings based upon consideration of the following cost factors:

1. Timeliness and quality of installation, repair and maintenance;
2. Quality of user training;
3. Supplies and replacement parts;
4. Modification of existing equipment, materials or systems;
5. Future upgrades and updates;
6. Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the product which is the subject of the standardization determination.
7. Administrative costs.

3.1~~3~~4-2 The Purchasing Agent's written decision shall state the facts reviewed in arriving at the decision, the reasons for the decision, the period of time for which it is valid for making purchases and under what conditions it must be reviewed for possible revision. A copy of the Purchasing Agent's decision shall be attached to any report to the City council seeking approval of a purchase under this section.

3.1~~3~~4-3 Available Competition.

When there is more than one (1) source for the standardized supply or service, competitive procurement in accordance with Sections I-2-3.0~~6~~7, I-2-3.0~~7~~8 and I-2-3.0~~8~~9 is required.

3.1~~3~~4-4 Annual Report.

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council a list of all standardizations approved during the past fiscal year including the product, manufacturer, and reasons for the standardization as authorized in this section.

I-2-3.1~~4~~5 - Local Purchasing Preference

3.1~~4~~5-1 Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall be applicable to the following types of purchases or contracts executed in excess of Ten Thousand Dollars ($10,000) and pursuant to either a formal or an informal bid:

(a) Purchases or contracts for the purchase of supplies, materials and equipment; and

(b) Purchases or contracts for services that are not otherwise of the kind contemplated by Section I-2-3.1~~1~~3.

3.1~~4~~5-2 Exceptions to the Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall not be applicable to the following types of purchases or contracts:

(a) Purchases or contracts for professional services of the kind contemplated by Section I-2-3.1~~1~~3;

(b) Public works contracts;

(c) Emergency purchases made pursuant to Section I-2-3.0~~4~~3;

(d) Sole source purchases made by the Purchasing Agent pursuant to Section I-2-3.0~~5~~6;

(e) Public Agency purchases made by the Purchasing Agent pursuant to Section I-2-3.0~~4~~5;

(f) Purchases or contracts where legal constraints on the expenditure of funds prohibit the application of the local preference or those contracts funded by the federal or state government, including federal or state grant funding, when such funding would be jeopardized by application of the local preference.

3.145-3 Reduction of Bid by Eligible Local Provider; Procedure for Applying the Local Preference.

In contracting for, supplies or services as specifically set forth in this section, the City shall grant preference to a local provider who submits a bid within ten percent (10%) of the lowest responsible bidder and who is otherwise responsive and responsible to the invitation for bids, which preference shall allow the local provider the opportunity to reduce its bid to an amount equal to the amount of the lowest responsible bid, if the lowest responsible bid is submitted by other than an Eligible Local Provider. In the event an Eligible Local Provider reduces its bid to the amount of the lowest responsible bid, the Eligible Local Provider shall be deemed to have provided the lowest responsible bid and shall be awarded the contract.

(a) The preference and opportunity to reduce the amount of the bid shall be provided first to the lowest Eligible Local Provider and, if not accepted by such Eligible Local Provider within five (5) business days of the opening of the bids, then to each successive Eligible Local Provider who is within ten percent (10%) of the lowest responsible bid, in ascending order of the amount of the bids.

(b) The local provider shall certify under penalty of perjury, as a part of its bid and in a form and manner as required by the City, that the bidder qualifies as a local provider. The preference established in this section shall be waived if the certification does not appear on the respective bid.

3.145-4 No Exemption from Local Sales Tax.

The application of a local preference as set forth in this section shall not exempt any Eligible Local Provider to which a contract is executed or awarded from having to pay all applicable federal, state or local sales tax.

I-2-3.156 - Recycled Product Procurement

3.156-1 The City of Milpitas is committed to the conservation and protection of state and local resources; therefore, bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The Purchasing Agent shall purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to or better than that of non-recycled products.

(a) The City shall require contractors and consultants to use environmentally preferable products, and use products manufactured with the maximum practicable amount of post-consumer material, whenever cost effective and to the extent practicable.

(b) The City shall ensure that they and their contractors use both sides of paper sheets whenever practicable.

(c) To the extent possible, the recycled product preference cost shall apply to the bids where the City has made multiple awards, so as to maximize the dollar participation of firms offering recycled products.

(d) To the extent possible, all printing contracts made by the City shall specify that the paper used shall meet the recycled content requirement of thirty percent (30%) postconsumer fiber.

(e) The City may specify recycled content at levels higher than the minimum content standards.

3.156-2 Where the use of recycled products is designated, the Purchasing Agent shall:

(a) Maintain a list of designated recycled products that contain a practicable amount of recovered material and are consistent with State and Federal guidelines and coordinate with all departments to purchase environmentally preferable products whenever practicable.

(b) Where the contract is competitively solicited, grant the supplier of recycled products with a minimum of 10% recycled content in its product(s) a preference of ten percent (10%) based on the bid or price quoted by supplier of recycled products when determining the lowest responsive and responsible or highest ranked bidder depending upon procurement process used.

(b) Inform Departments of processes and procedures that are environmentally preferable in order to facilitate their evaluation and use by the Departments whenever practicable.

(c) Monitor contracting procedures to ensure that they do not discriminate against recycled products without justification, and that they maximize the specification of designated recycled products whenever practicable.

I-2-3.1~~5~~6 – Testing and Inspection of Samples

3.1~~5~~6-1 The Purchasing Agent may require vendors to provide samples to be tested and inspected as part of the applicable procurement process. The Purchasing Agent shall have the authority to require chemical, physical, or other tests of samples submitted with bids which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Purchasing Agent shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the bidder's expense.

I-2-3.1~~6~~7 - Waiver of Informalities: Rejection of Responses

Where the Purchasing Agent or City Council are required to make purchases upon competitive solicitations, said Purchasing Agent or City Council may waive any informalities or minor irregularities related to the procurement process, solicitation documents or responses or may reject any and all responses (anything herein contained to the contrary notwithstanding) if said Purchasing Agent or City Council deems said rejection to be in the best interests of the City. Said rejection shall be at the sole discretion of the Purchasing Agent or City Council, as the case may be. Upon rejection of responses, the Purchasing Agent or the City Council, as the case may be, may:

(1) Give subsequent notice for a new competitive solicitation;
(2) Postpone said purchase or disposal definitely or indefinitely; or
(3) Elect to make the purchase without competitive solicitation, upon notice (and as if a competitive solicitation, upon notice, had not been required in the first instance) in accordance with the authority granted by the various subsections of this section.

I-2-3.1~~7~~8 – Insurance and Bonds

(a) The Purchasing Agent is authorized to require vendors to provide insurance and surety bonds for contracts. Where required, the bidder shall submit insurance or surety bonds, or both, acceptable to the City.
(b) Where required by the Purchasing Agent, all responses to solicitations shall include such bidders' security as is required by the solicitation documents and shall be presented under sealed cover. If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the bidders' security may be declared forfeited by the Purchasing Agent to the City, and any bonds so forfeited may be prosecuted and collected and the amount of the security paid into the general fund. Unsuccessful bidders shall be entitled to return of their bidders' security. The form and amount of such security shall be described in the notice inviting responses or in the specifications referred to therein.
(c) To secure faithful performance of the contract, the Purchasing Agent is authorized to require security in the form of cash, cashier's check, certified checks, or corporate faithful performance bonds, in such amount as the Purchasing Agent shall deem reasonably necessary to protect the best interests of the City. If the Purchasing Agent requires such security, the form and amount thereof shall be described in the notice inviting responses or in the specifications referred to therein. Unless otherwise required by law or the funding source, the Purchasing Agent need not require such security if the Purchasing Agent does not deem such to be reasonably necessary to protect the best interest of the City, or if the Purchasing Agent believes the interests of the City are best served by not requiring the same.

I-2-3.1~~8~~9 – Protest Procedure

3.1~~8~~9-1 Any interested party may file a protest to a proposed award of a contract in an amount over Ten Thousand Dollars ($10,000). The protest shall be filed with the Purchasing Agent in writing no later than seven (7) calendar days after the posting of the intent to award and shall set forth the basis for the protest and any proposed remedy.

3.~~21~~19-2 The Purchasing Agent will review the protest as soon as possible and will provide a written response to the protestor. The Purchasing Agent's decision on a bid protest for a procurement in an amount no more than Fifty Thousand Dollars ($50,000) shall be final.

3.1~~8~~9-3 For procurements having a value of more than Fifty Thousand Dollars ($50,000), the City Council will consider the protest and take action thereupon, which action shall be final.

I-2-3.~~19~~ 20 - Public Works Contract Purchasing Procedures

3.~~19~~20-1 Definitions.

For the purposes of this Section I-2-3.~~19~~20 the following words and phrases shall have the following meanings:

1. Act means the Uniform Public Construction Cost Accounting Act (California Public Contracts Code section 22000 et seq.).
2. Commission means the California Uniform Construction Cost Accounting Commission.
3. Facility means any plant, building, structure, ground facility, utility system, subject to the limitation of subsection 4 of the definition for public project below, real property, streets and highways, or other public works improvement.
4. Public project has the meaning assigned to it under Public Contract Code section 22002, as it may be amended from time to time.

3.~~19~~20-2 Public Project Contracting Procedures.

The City shall follow the contracting procedures set forth in Article 3 of Act (Public Contract Code section 22030 et seq.). The City shall procure public projects by force account, negotiated contract, purchase order, informal bidding or formal bidding as required in accordance with the applicable dollar amount limitations under Section 22032 of the Act, as it may be amended from time to time.

3.~~19~~20-3 Contractors List.

The Directors of Engineering and Public Works, in coordination with the City's Purchasing Agent, shall compile and maintain a list of qualified contractors identified according to categories of work. This list shall comply with the requirements of Section 22034 of the Act and the criteria promulgated, from time to time, by the Commission.

3.~~19~~20-4 Informal Bidding - Notice.

(a) When a public project is to be performed which qualifies for informal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
   (1) Mailed notice shall be sent to all contractors on the contractors list for the category of work being bid; and
   (2) Mailed notice shall be given to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County; and
   (3) Additional notice to other contractors and/or trade journals may, in the discretion of the City, be given.

(b) If the product or service to be acquired is proprietary in nature such that it can only be obtained from a certain contractor or contractors, notice inviting bids may be sent only to such contractor or contractors.

(c) All mailing of notices to contractors and construction trade journals shall be completed not less than ten days before bids are due.

(d) The notice shall describe the project in general terms, how to obtain more detailed information about the project and shall state the time and place for submission of bids.

3.~~19~~20-5 Formal Bidding—Notice.

(a) When a public project is to be performed that requires formal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
   (1) The notice shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.

(2) The notice shall be published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the City; or, if there is no newspaper printed and published within the jurisdiction of the City, in a newspaper of general circulation which is circulated within the City.

(3) The notice inviting formal bids shall also be mailed to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County. The notice shall be mailed at least 15 calendar days before the date of opening the bids.

3.~~19~~20-6 Award of Contracts.

The City Manager is authorized to award contracts for public projects of less than or equal to one-hundred thousand dollars.

3.~~19~~20-7 Rejection of Bids.

The City Manager or the City Council, as the case may be, may, in the Manager's or Council's discretion, reject all bids and proceed as authorized by the Act.

3.~~19~~20-8 Approval of Plans and Designs.

The City Engineer, or designee, is authorized to approve plans and designs, and all amendments and addenda thereto, for performance of a public project of the City.

I-2-3.21~~0~~ - Authority to Modify Contracts Awarded by City Council

The Purchasing Agent is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any amendment or change order to a supply or service contract previously approved by the Council within the following guidelines:

(a) To extend the term of the contract, at the recommendation of the Requesting Department, for a period not to exceed twelve (12) consecutive months from the last Council-approved expiration date;

(b) To make minor revisions to the scope of services or schedule;

(c) To make clerical corrections; or

(d) The Purchasing Agent may also approve and sign assignments of contracts previously approved by the City Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.

All modifications to contracts, including, but not limited to, changes to the scope of the work, quantity of goods, price or term shall be made in writing and approved by the Requesting Department. Amendments or change orders are permitted only if the modification would not cause the contract to exceed the monetary limits defined below:

Contract Amount	Individual Change Order Authority	Cumulative Change Order Authority
~~Under~~ ~~No more than~~Less than or equal to ~~-~~$100,000	10% of Award or $10,000 whichever is less	15% of Award or $15,000 whichever is less
Over $100,000	10% of Award or $20,000 whichever is less	15% of Award or $40,000 whichever is less

All contract changes must be reflected on the Purchase Order and/or contract amendment. All other changes outside the parameters defined in this section must be approved by the City Council.

Section 4 - Purchase Orders

I-2-4.01 – Purchase Order Requirement.

Except as otherwise approved by the Purchasing Agent or pursuant to Section I-2-2.03, no contract award for supplies or services shall be deemed to be an authorization to proceed with provision of the supplies or services until a purchase order is appropriately authorized and issued.

I-2-4.02 – Issuance of Purchase Orders.

Upon ascertaining the price to be paid for supplies or services, the Purchasing Agent shall issue a purchase order. The Purchasing Agent shall forward the original purchase order to the vendor, retaining one (1) copy for his purchase order file. He shall likewise forward one (1) copy of the purchase order to the requesting department to be used as a receiving report.

I-2-4.03 - Sufficient Funds Must be Available.

No purchase order shall be issued until it has been ascertained that there is to the credit of the requesting department a sufficient unencumbered appropriated balance in excess of all unpaid obligations to defray the amount of such order.

Section 5 - Receipt of Goods and Services

I-2-5.01 - Department Head Responsible for Checking Quality and Contract Management.

Upon receipt by any Department of supplies or services, the Department head or designee, shall be responsible for the making of a careful check of the quality, condition, and quantity of goods received against a copy of the purchase order and the packing list, when applicable, or services rendered as specified in the contract.

I-2-5.02 - Department Head Responsible for Checking Invoice.

The Department head or designee, upon receipt of a vendor's invoice, shall check the invoice for correctness of quantities, unit prices, price extensions, discounts, transportation, allowances, services rendered, hourly rates etc. When applicable, the Department head or designee shall compare the same with the purchase order and packing list. Approved invoices shall be forwarded to Accounts Payable for payment processing.

Section 6 - Inspections

I-2-6.01 - Department Head's Inspection.

The Department head or designee shall inspect, or cause to be inspected, all deliveries of supplies or services to determine their conformance to specifications. The Department head or designee shall have the authority to require chemical, physical, or other tests of samples of deliveries which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Department head or designee shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the vendor’s expense.

Section 7 - Disposal of City Property

I-2-7.01 - Disposal of Property with an Estimated Value of Five Thousand Dollars ($5,000) or Less.

Except as otherwise provided by State law or City ordinance, the Purchasing Agent or designee shall be empowered to dispose of property of the City, including abandoned property, which cannot be used by any department of the City, at public or private sale or by renting or destroying the same, (all with or without notice, competitive bid or necessity of posting bid bonds, at the Purchasing Agent or designee's discretion, and upon such terms as he or she deems best) provided any single item of property involved does not exceed Five Thousand Dollars ($5,000) in estimated current market value.

I-2-7.02 – Deposit.

The Purchasing Agent or designee may, in his or her discretion, require that a deposit in the amount of the bid or any fraction thereof accompany each bid upon the disposal of City property.

I-2-7.03 - Disposal of Property with an Estimated Value of More Than Five Thousand Dollars $5,000.

In the event that the estimated value of any single item of property exceeds Five Thousand Dollars ($5,000) in current market value, the City Council may, upon notice, empower the Purchasing Agent to dispose of it (in accordance with the same terms and conditions and subject to the same discretion and limitations as if it were estimated at Five Thousand Dollars ($5,000) or less in value). Alternatively, the City Council may elect to sell, rent or destroy the same in accordance with whatever provisions, terms and conditions the City Council may elect.

I-2-7.04 - Retired K-9 Units and Firearms.

Notwithstanding the other provisions of this Chapter, the City Manager or designee is authorized to determine the disposition of:

(a) police service dogs including:
  (1) sale or donation of the police service dog to the assigned police officer when the officer leaves the canine unit or if the police service dog can no longer perform its required duties;
  (2) the original supplier; or
  (3) any other method that best serves the interests of the City; and
(b) surplus firearms including:
  (1) sale or donation to a law enforcement agency;
  (2) sale to an authorized firearms retailer;
  (3) sale or donation to an active or retired sworn member of the police department consistent with the Memorandum of Understanding between the City and the Milpitas Police Officers Association; or
  (4) destruction if no safe alternative is available.

Section 8 – Claims

I-2-8.01 - Filing of Claims.

Claims for loss, damage, breakage, shortage or otherwise, claims for refund, claims for adjustment, and claims for insurance or other indemnity shall be made promptly by the Purchasing Agent.

Section 9 - Ethics in Public Purchasing

I-2-9.01 - Ethics in Public Purchasing.

Every employee participating in the procurement, management, storage, and use of supplies or services purchased by the City for its benefit shall adhere to the following principles:

(1) City employees shall not obligate the City, financially or otherwise, by any means, including, but not limited to, purchase orders and contracts, when the employee has a personal, material, financial, or other interest in the obligation.
(2) City employees shall not accept any form of gratuities.
(3) City employees may not accept discounts, reward points, sales, reduced prices, or other benefits offered for personal purchases by suppliers because of employee's relationship with the City.
(4) City employees shall be personally liable for any unauthorized procurements.

Section 10 - Severability

I-2-10.01 – Severability.

If any provisions of this Chapter or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Chapter that can be given effect without the invalid provisions or application, and to this end, the provisions of this Chapter are declared to be severable.

Section 11 - Exclusions from Chapter

I-2-11.01 - Exclusions from Chapter.

The provisions of this Chapter shall not apply to items that typically cannot be bid or that the City Council has chosen to exclude from bidding. The following list is exemplary of these types of items and/or services but is not intended to be all inclusive.

11.01-1 To franchises governed by the provisions of the California Public Utilities Code or other statute of the State of California;

11.01-2 Where State or Federal law requires a different procedure;

11.01-3 To franchises, rights, privileges, licenses and permits granted by the City of Milpitas (including, but not limited to, franchises, rights and privileges granted for refuse disposal under Title V, Chapter 200 of the Milpitas Municipal Code and the Cable Franchise under Title III, Chapter 22 of the Milpitas Municipal Code;

11.01-4 To the purchase of insurance;

11.01-5 To the purchase of art;

11.01-6 To the leasing, purchase or sale of land or any interest therein;

11.01-7 To the hiring of or contracting for personnel (whether as temporary, seasonal or permanent employees, agents or independent contractors);

11.01-8 To the purchase of utilities, including, but not limited to telephone service, gas, electricity or water;

11.01-9 To the purchase of securities for the City's investment portfolio subject to the City's investment policy.

11.01-10 To the payments of debt service and bond indebtedness; arbitrage compliance; refunds of deposits; payments and/or pass through of collections on behalf of other governmental agencies; budget approved memberships and dues; authorized Community Development Block Grants (CDBG); memorandum of understanding obligations; budget approved contributions to not-for-profit organizations; United States Postal Service postage; City Council approved grant programs; employee travel expenses.

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:	**Adopt a Resolution Reviewing and Accepting the Annual Developer Fee Disclosure Information for the Calaveras Boulevard Widening Traffic Impact Fee, Milpitas Business Park Traffic Impact Fee, the Transit Area Specific Plan (TASP) Impact Fee, and the Storm Drain Fee for the Fiscal Year Ended June 30, 2020**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	1/5/2021
Staff Contact:	**Walter C. Rossmann, 408-586-3111**
Recommendation:	Adopt a resolution consistent with the Mitigation Fee Act to review and accept the annual developer fee disclosure information for the Calaveras Blvd Widening Traffic Impact Fee, Milpitas Business Park Traffic Impact Fee, Transit Area Specific Plan Impact Fee and Storm Drain Fee for the Fiscal Year Ended June 30, 2020.

Background:

California Government Code Section 66000 et seq. ("Mitigation Fee Act") requires local agencies to provide an accounting of fees charged for development projects. The City has two basic accounting and reporting responsibilities under the Government Code. Section 66001(d) requires that, five years after collecting a development fee subject to this Code section and every five years thereafter, the local agency shall make findings with respect to any portion of the fee remaining unexpended, whether committed or uncommitted. If the required findings are not made, the unexpended funds shall be refunded to the current property owners.

Five-year findings must:

1. Identify the purpose of the fee;
2. Demonstrate a reasonable relationship between the fee and the purpose for which it was charged;
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements; and
4. Designate the approximate dates on which these funding sources can be expected to be deposited into the appropriate account or fund.

When sufficient funds have been collected to complete financing on incomplete public improvements, the local agency has 180 days to identify an approximate date by which the construction of the public improvement will begin or else is required to refund the unexpended fees, including accrued interest, to the current owner of lots or units of the development project.

For Fiscal Year ending on June 30,2019, the City reported its last Five-Year findings for the remaining unexpended fee proceeds for the Calaveras Blvd Widening Traffic Impact Fee, Milpitas Business Park Traffic Impact Fee, and Transit Area Specific Plan Impact Fee. The City will need to report the next Five-Year findings report for Fiscal Year ending on June 30, 2024.

The second requirement set forth under Government Code Section 66006(b)(1) provides that each local agency is required on an annual basis, within 180 days after fiscal year end, for each separate account, to make available to the public the following information:

1. Brief description of the type of fee in the account;
2. The amount of the fee;
3. The account's beginning and ending balance;
4. The amount of fees collected and the interest earned;
5. A description of the improvements on which the funds were expended and the amount expended on each improvement including the percentage of the improvement funded with development fees;
6. An approximate date by which the construction of a public improvement will begin if the local agency determines that sufficient funds have been collected to complete financing on the incomplete improvement;
7. A description of each inter-fund transfer or loan made from the account; and
8. The amount of any refunds made pursuant to Code Section 66001.

The City deposits impact fees subject to the above disclosure in the Calaveras Boulevard Widening Traffic Impact Fee Fund, Milpitas Business Park Traffic Impact Fee Fund, Transit Area Specific Plan (TASP) Impact Fee Fund, and Storm Drain Development Fund to track these development related fees. Interest income is allocated to these funds based on their respective monthly cash balances. Expenditures from these funds were in the form of capital improvement projects to either renovate existing facilities or maintain the existing level of service, consistent with the General Plan and approved Capital Improvement Plan, due to increased demand related to the development projects.

Analysis:

Annual reports (included in the agenda packet) summarize the Fiscal Year 2019-2020 fund activity for Calaveras Boulevard Widening Traffic Impact Fee (Exhibit 1); Milpitas Business Park Traffic Impact Fee (Exhibit 2), Transit Area Specific Plan (TASP) Impact Fee (Exhibit 3); and Storm Drain Development Fee (Exhibit 4). The reports show the amount of fees collected in fiscal year 2019-2020, interest income, a brief description of the projects funded, the percentage of the projects funded by the development fees, and the beginning and ending balance of the funds. The table below shows the beginning fund balance, revenues received, expenditures and ending fund balance for each impact fee for Fiscal Year 2019-2020. The plan to expend the funds available in ending fund balances for the various fees is outlined in the attached reports. For the TASP Impact Fee, for example, the unexpended fee proceeds will be used to fund necessary infrastructure (e.g.: A community center/recreation facility, a park, Montague Expressway widening) as identified in the Transit Area Development Impact Fee Report, dated February 2014, and the City's Capital Improvement Program 2020-2025 Final Report.

FY 2019-20	Calaveras Blvd Widening Traffic Impact Fee	Milpitas Business Park Traffic Impact Fee	TASP Impact	Storm Drain Development**
Beginning Fund Balance	$1,588,302*	$379,914*	$42,811,267	$2,934,538
Revenues	39,567	86	23,423,950	248,438
Expenditures	(95,682)	(380,000)	(14,514,775)	(1,505,000)
Ending Fund Balance	$1,532,187	$0	$51,720,442	$1,677,976

*Beginning Fund Balance was restated due to a correction of Impact Fees classification. $251,702 in Impact Fees were inadvertently accounted for in the Milpitas Business Park Impact Fee Fund instead of the Calaveras Blvd Widening Impact Fee Fund; thereby increasing the beginning fund balance in the Calaveras Blvd. Widening Impact Fee Fund and decreasing the beginning fund balance in the Milpitas Business Park Traffic Impact Fee Fund by $251,702.
**Annual reporting for the Storm Drain Fee is subject to Government Code Section 66013, however those reporting requirements are substantially similar to the annual reporting requirements under Government code section 66006 and are referred to collectively here for convenience.

Policy Alternative:

Not applicable.

Fiscal Impact:

Not applicable.

California Environmental Quality Act:
Not applicable.

Recommendation:
Adopt a resolution consistent with the Mitigation Fee Act to review and accept the annual developer fee disclosure information for the Calaveras Blvd Widening Traffic Impact Fee, Milpitas Business Park Traffic Impact Fee, Transit Area Specific Plan Impact Fee and Storm Drain Fee for the Fiscal Year Ended June 30, 2020.

Attachment:
Resolution including Status Reports as Exhibits

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS REVIEWING AND ACCEPTING ANNUAL DEVELOPMENT FEE DISCLOSURE INFORMATION FOR THE CALAVERAS BOULEVARD WIDENING TRAFFIC IMPACT FEE, MILPITAS BUSINESS PARK TRAFFIC IMPACT FEE, THE TRANSIT AREA SPECIFIC PLAN IMPACT FEE AND THE STORM DRAIN FEE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 66001

WHEREAS, the Mitigation Fee Act, Government Code Section 66000 *et seq*., authorizes the City of Milpitas ("City") to impose, collect, and expend mitigation fees to offset the impacts of development within the City; and

WHEREAS, pursuant to its authority under the Mitigation Fee Act (Government Code §§ 66000 *et seq*.) the City Council established, adopted, and imposed a Calaveras Boulevard Traffic Impact Fee, a Milpitas Business Park Traffic Impact Fee, a Transit Area Specific Plan ("TASP") Impact Fee and a Storm Drain Fee (collectively, the "Fees"); and

WHEREAS, the City has deposited all Fees in separate non-commingled funds ("Funds") established for such a purpose; and

WHEREAS, the City has made available to the public within one hundred eighty (180) days following the last day of the fiscal year the annual accounting information ("Annual Reports") required by the Mitigation Fee Act related to each of the Fees; and

WHEREAS, the City has mailed notice at least fifteen (15) days prior to this meeting to all interested parties who have requested notice of any meeting relative to the City's imposition of the Fees and has held a duly-noticed, regularly scheduled public meeting at which oral and written testimony was received regarding the Annual Reports at least fifteen (15) days after the City made this information publicly available.

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. In accordance with Government Code Section 66006(b) and Section 66013, the City Council has reviewed and approves the Annual Reports for each of the Fees, which are attached to this Resolution as **Exhibits 1-4**, and are also placed on file with the City Clerk. The Council, based upon the information contained in the Annual Reports and the remaining need for the unexpended funds, finds as follows:

    a. That each of the Annual Reports describe the types of Fees contained in each of the Funds, including the amount of the Fees, the beginning and ending balance of the Funds, as well as the amount of Fees collected, and the interest earned thereon.

    b. That each of the Annual Reports identifies each public improvement on which the Fees were expended, the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with the Fees.

    c. That there were interfund transfers or loans made from the Funds, as noted.

    d. That sufficient funds have not been collected to complete the financing of any incomplete public improvement, and that there were no refunds or allocations made of the Fees.

3. Pursuant to these findings, and at this time, there shall not be a refund of any unexpended Fees.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

Exhibit 1
City of Milpitas

Annual Report of Development Fees and Expenditures for the
Fiscal Year ended June 30, 2020

Calaveras Boulevard Widening Traffic Impact Fee

Description:

In order to implement the goals and objectives of the City of Milpitas General Plan and to mitigate the traffic impacts caused by new development in the City of Milpitas, certain roadways such as Calaveras Boulevard must be widened.

Fee:

The amount of the fee as of June 30, 2020 was as follows:

Area Covered	Type of Dwelling	Amount
Citywide except TASP to widen Calaveras Boulevard	Residential 5 or more units	$314.34 per dwelling unit
	Retail Development of 1,000 or more square fee	$947.04 per thousand square feet
	Office Development of 1,000 or more square feet	$807.93 per thousand square feet
	Other Uses	A focused nexus study will be required

Exhibit 1- continued

Calaveras Widening Impact Fee Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances for
Fiscal Year 2019-2020

Fees collected and interest earned:	
Revenues	
Traffic Fees	$ 11,087
Interest	28,480
Total Revenues	39,567
Fees expended on public improvement:	
Expenditures:	
Refund of overpayment of Impact Fees	95,682
Total Expenditures	95,682
Excess/(deficiency) of revenues over/ (under) expenditures	(56,115)
Beginning and ending balance:	
Fund Balance, beginning of year (restated)	1,588,302*
Fund Balance, end of year	$1,532,187

Inter-fund transfer or loan made description:
None

Refunds made from surplus fees and amount of any allocations made:
None

* Restated beginning Fund Balance by increasing it by $251,702, Impact Fees were inadvertently accounted for in the Milpitas Business Park Impact Fee Fund.

Exhibit 2
City of Milpitas

Annual Report of Development Fees and Expenditures for the
Fiscal Year ended June 30, 2020

Milpitas Business Park Traffic Impact Fee

Description:

In order to implement the goals and objectives of the City of Milpitas General Plan and to mitigate the traffic impacts caused by new development in the Milpitas Business Park and McCarthy Ranch sites certain roadways such as Montague Expressway, Alder Drive must be widened, additional through lanes and left-turn and right turn only lanes must be added to certain intersections as identified in the Milpitas Business Park Traffic Impact Fee Study.

Fee:

The amount of the fee as of June 30, 2020 was as follows:

Area Covered	Type of Dwelling	Amount
Citywide except TASP to widen Montague Expressway		$1,024 per PM peak trip

Exhibit 2- continued

Milpitas Business Park Impact Fee Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances for
Fiscal Year 2019-2020

Fees collected and interest earned:	
Revenues	
Interest	$ 86
Total Revenues	86
Fees expended on public improvement:	
Expenditures:	
1. CP 4179 – Montague Expressway Widening at Great Mall Parkway	380,000
Total Expenditures	380,000
Excess/(deficiency) of revenues over/ (under) expenditures	(379,914)
Beginning and ending balance:	
Fund Balance, beginning of year (restated)	379,914*
Fund Balance, end of year	$0

CIP Number and Title	Project Description	% of the project funded with development fees	Construction Commencement Date
CP 4179 – Montague Expressway Widening at Great Mall Parkway	This project provides a fourth through lane in each direction on Montague Expressway at Great Mall Parkway, one westbound lane on Montague Expressway from Pecton Court to UPRR rails, and new bridge over Berryessa Creek. Construction is to be completed by VTA's contractor.	25%	2019

Inter-fund transfer or loan made description:
None

Refunds made from surplus fees and amount of any allocations made:
None

* Restated beginning Fund Balance by decreasing it by $251,702, Impact Fees were inadvertently accounted for in the Milpitas Business Park Impact Fee Fund.

Exhibit 3
Annual Report for the Transit Area Specific Plan (TASP) Impact Fee
Fiscal Year ended June 30, 2020

Description:

Based on Resolution No. 8344 Exhibit A Transit Area Development Impact Fee Update Report prepared by Economic & Planning Systems, Inc., dated February 2014, the purpose of the Transit Area Specific Plan Impact fee is to fund the planning and development (as described in the Report) of an approximately 437-acre area in the southern portion of the City near the Great Mall shopping center to support more residents and workers with appropriately scaled utilities, parks, community facilities, and roadways.

Fee:

The amount of the fee per November 2019 Transit Area Development Impact Fee Update:

Type of Dwelling	**Amount**
Residential	$40,487 per unit
Retail	$26.49 per square foot
Office	$42.52 per square foot

Exhibit 3- Continued

Transit Area Specific Plan (TASP) Impact Fee Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances for
Fiscal Year 2019-2020

Fees collected and interest earned:
Revenues:

TASP Impact Fees	$ 22,158,628
Interest	1,265,322
Total Revenues	23,423,950

Fees expended on public improvement (See table for % of cost funded with fees):
Expenditures:

1. CP 2004 - S. Milpitas Boulevard Extension (DB1)	79,252
2. CP 2005 - Lower Penitencia Creek Pedestrian Bridge (DB9)	100,000
3. CP 2006 - Transit Area Specific Plan Update (DB44)	300,000
4. CP 2008 - Montague Ped. Overcrossing at Piper Dr. (DB7)	(2,700,000)*
5. CP 2010 - Land/Right-of-Way Value Determination	20,000
6. CP 2011 - Transit Area Police Substation	310,000
7. CP 2012 - (Rmb) TASP Linear Trails	3,270,000
8. CP 2013 - (Rmb) Trade Zone/Montague Park – North	3,100,000
9. CP 2015 - (Rmb) S. Milpitas Imprv - Gibraltar to UPRR	850,000
10. CP 2016 - S. Milpitas Blvd. Veh. Bridge at Penitencia	1,025,000
11. CP 2017 - TASP On-Street Parking Program	330,000
12. CP 2018 - Montague Ped. Overcrossing at Penitencia	1,010,000
13. CP 2019 - (Rmb) TASP Recycled Water Distribution	800,000
14. CP 2020 - SCVWD Zone 1 Pressure Red. Valve	100,000
15. CP 2021 - Costa Street Plan Line Study	125,000
16. CP 2022 - Feasibility of POCs at VTA Light Rail Platforms	200,000
17. CP 4179 - Montague Expressway Widening (DB2)	(380,000)**
18. CP 4281 - TASP Underground Utility District (DB10)	245,000
19. CP 5115 - Parks and Recreation Master Plan Update	6,425,000
20. Sango Court Land Purchase (DB29)	5,218,254
21. Falcon Drive (DB3)	1,365
22. Park Land Purchase (DB33)	84,049
23. TASP Plan Administration Expense	22,897
24. Interest on Inter fund Loan for Sewer System (DB15)	103,958
Total Expenditures	14,514,775
Excess (deficiency) of revenues over (under) expenditures	8,909,175

Beginning and ending balance:

Fund Balance, beginning of year	42,811,267
Fund Balance, end of year	$51,720,442

*Capital Improvement Project 2008 returned funds back to the TASP fund.
** Capital Improvement Project 4179 returned funds back to the TASP fund.

CIP/Item Number and Title	Project Description	% of the project funded with development fees	Construction Commencement Date
CP 2004 - S. Milpitas Boulevard Extension (DB1)	This project provides for the acquisition of land, design, construction, and administration for extension of S. Milpitas Boulevard including utilities from Montague Expressway to the edge of BART Station frontage. The City entered in to an agreement on August 3, 2010 with the Valley Transportation Agency (VTA) to construct the project for the City in conjunction with the BART project. The BART project will also be responsible for the construction of the remaining portion of the road from the BART Station to Capital Avenue.	100%	2013
CP 2005 - Lower Penitencia Creek Pedestrian Bridge (DB9)	This project provides for the design and construction of a new pedestrian bridge over Lower Penitencia Channel adjacent to the Centre Pointe residential development and will provide connection to the City's McCandless Park site.	53%	Has not started yet
CP 2006 - Transit Area Specific Plan Update (DB44)	The Transit Area Specific Plan (TASP) was approved in 2008. There have been minor amendments to TASP focused primarily on individual properties, but no comprehensive evaluation of the plan and the effectiveness of its implementation has been made. Approximately 95% of the housing planned and cleared under CEQA for the area have been entitled or constructed. Approximately 50% of retail uses and none of the office have been developed. An evaluation of development projects proposed, entitled, or constructed; processes and regulations for development; changes to the land use diagram; and remaining development capacity should be undertaken. This project will include an update to the TASP EIR to provide environmental clearance for additional residential development.	100%	2012
CP 2008 - Montague Ped. Overcrossing at Piper Dr. (DB7)	This project provides for the construction of a pedestrian overcrossing (POC) over Montague Expressway at Piper Drive. The pedestrian overcrossing is part of the Transit Area Specific Plan (TASP) circulation infrastructure improvement that provides safe and convenient pedestrian circulation between the Milpitas BART station, Great Mall and surrounding residential developments.	100%	2016
CP 2010 - Land/Right-of-Way Value Determination	This project provides for the annual evaluation and determination of land and right-of-way fair market values within the City for the purpose of updating development fee calculations such as the park-in-lieu fee.	100%	2019
CP 2011 - Transit Area Police Substation	This project provides for tenant improvements and equipment to construct a new police substation within the Transit Area Specific Plan (TASP) area. A substation within TASP area will reduce response time and increase police presence.	100%	Has not started yet
CP 2012 - (Rmb) TASP Linear Trails	This project provides for reimbursement to developers to construct linear trail segments as specified in the Transit Area Specific Plan (TASP).	100%	Has not started yet
CP 2013 - (Rmb) Trade Zone/Montague Park - North	This project provides for reimbursement to developers to construct a new linear park north of Penitencia Creek from new South Milpitas Blvd Extension to the city limits of San Jose in the Trade Zone/Montague Park subdistrict as specified in Transit Area Specific Plan.	100%	2017

CP 2015- (Rmb) S. Milpitas Imprv - Gilbraltar to UPRR	The project provides for roadway surface improvements and utility relocation on South Milpitas Blvd. from Union Pacific Railroad (UPRR) tracks to Gibraltar Drive.	100%	2019
CP 2016 - S. Milpitas Blvd. Veh. Bridge at Penitencia	This project provides for design and construction of a vehicular bridge over Penitencia Creek at the end of the new S. Milpitas Blvd. Extension. The vehicular bridge is part of the Transit Area Specific Plan (TASP) circulation infrastructure improvement to provide vehicular, bicycle and pedestrian connectivity between TASP developments, Milpitas BART station, Great Mall and surrounding residential developments.	100%	Design only. Construction has not yet started.
CP 2017 - TASP On-Street Parking Program	This project provides for a Transit Area Specific Plan (TASP) area on-street parking program including installation of time limited parking signage within 0.5 mile of Milpitas BART station. The goal of the project is to encourage on-street parking supply turnover around Milpitas BART station so that nearby residents and the public have parking opportunities to access nearby parks and retail destinations, and discourage BART commuters from occupying on-street parking for prolong periods of the day.	100%	2019
CP 2018 - Montague Ped. Overcrossing at Penitencia	This project provides for design and construction of a pedestrian overcrossing (POC) over Montague Expressway at the east levee of Penitencia Creek. The pedestrian overcrossing is part of the Transit Area Specific Plan (TASP) circulation infrastructure improvement to provide safe and convenient pedestrian connectivity between TASP residential developments, schools, parks, Great Mall, and the BART Station.	100%	Design only. Construction has not yet started.
CP 2019 - (Rmb) TASP Recycled Water Distribution	The project provides reimbursement to developers for the construction of recycled water system extension in the Transit Area Specific Plan (TASP) area. This project is the City's effort to diversify the water supply system and offset the use of potable water with recycled water mainly for irrigation purposes. New mains will be installed along Great Mall Parkway, East Capitol Avenue, Montague Expressway, South Milpitas Boulevard, McCandless Drive, Sango Court, Tarob Court, and the Piper/Montague subdistrict.	100%	2019
CP 2020 - SCVWD Zone 1 Pressure Red. Valve	This project provides for the design and construction of a Pressure Reducing Valve (PRV) within the Transit Area Specific Plan (TASP) area to ensure water system operational redundancy. There are two pressure reducing valves within the TASP area regulating water pressure from the SCVWD Zone 2 service area into Zone 1 service area (Curtis PRV and Capitol PRV). Capitol PRV has reached the end of its service life and was replaced by the BART project.	100%	Has not started yet
CP 2021 - Costa Street Plan Line Study	This project provides for the preparation of a Plan Line Study to evaluate the extension of Costa Street to connect to S. Abel St. and S. Main St. in the Transit Area Specific Plan (TASP) area. The study will evaluate right-of way, adjacent property access, emergency vehicle access, pedestrian circulation, and streetscape opportunities.	100%	N/A
CP 2022 - Feasibility of POCs at VTA	The project provides for a feasibility study to determine the possibility of constructing pedestrian overcrossings (POC) at Valley Transportation Authority (VTA) Light Rail Platforms	100%	N/A

Light Rail Platforms	over eastbound lanes of Great Mall Parkway near South Main Street and E. Capital Avenue near S. Milpitas Blvd.		
CP 4179 - Montague Expwy Widening at Great Mall Pkwy (DB2)	This project provides a fourth through lane in each direction on Montague Expressway at Great Mall Parkway. It also includes adding one westbound lane on Montague Expressway from Pecton Court to UPRR rails.	15%	2016
CP 4281 - TASP Underground Utility District (DB10)	This project provides for the creation of new Underground Utility District (UUD) #7 within the City's Transit Area Specific Plan redevelopment area. The purpose of the district is to allow Pacific Gas & Electric Company (PG&E) to underground existing overhead electric, PG&E, Cable TV, and communication utilities. The new district would be administered by the City with the undergrounding design and construction to be completed by PG&E using the City's Rule 20A funds. The City has approximately $5.2M in available PG&E Rule 20A funds for use with this project.	100%	2020
CP 5115 - Parks and Recreation Master Plan Update	This project provides for an update to the 2008 Parks and Recreation Master Plan to include Transit Area Specific Plan (TASP) Parks, Midtown Parks, and City recreational facilities. The update will include a existing conditions assessment study of all parks and recreation facilities, public engagement and outreach, strategic plan to provide high-quality accessible parks and recreation facilities, programing and growth assessment analysis and plan for future growth in the City.	50%	N/A
20	Sango Court Land Purchase (DB29)	100%	N/A
21	Falcon Drive Improvements (DB3)	100%	2016
22	Park Land Purchase (DB33)	100%	2017
23	TASP Plan Administration Expense	100%	N/A
24	Interest on interfund loans advanced for the Sewer System (DB15) from General fund.	100%	2015

Inter-fund transfer or loan made description:
None
Refunds made from surplus fees and amount of any allocations made:
None

Exhibit 4
Annual Report Storm Drain Fee
Fiscal Year ended June 30, 2020

Description:

Prior to connection or discharge to any storm drain facility from a new development project, developers shall pay City a fee for connection/discharge to the City's storm drain system (Municipal Code XI-16-16). The purpose of the storm drain fee is to fund facilities necessary to provide storm drain services, and revenues derived from the fee imposed by the City shall be used solely for that purpose.

Fee:

The amount of the fee as of June 30, 2020 was as follows:

Type of Dwelling	Parcel Size	Per Parcel Fee
Connection Fees		
Single-family medium density	Equal or smaller than 8,710 square feet	$1,100
Single-family low density	Between 8,711 and 43,560 square feet	$1,916
Single-family	Between 1 acre and 4 acres	$3,594
Single-family	Between 4 acre and 9 acres	$4,792
Single-family	Greater than 9 acres	$6,469
Multiple-family		$16,771 per acre
Commercial, industrial, institutional, or mixed use sites		$21,562 per acre
Schools with athletic fields		$7,187 per acre
Parks		$4,792 per park

Exhibit 4- continued

Storm Drain Development Fund
Statement of Revenues, Expenditures, and Changes in Fund Balances for
Fiscal Year 2019-2020

Fees collected and interest earned:	
Revenues:	
Connection Fees	$105,739
Interest	142,699
Total Revenues	248,438
Fees expended on public improvement (See table for % of cost funded with fees):	
Expenditures:	
CP 3700 – Storm Drain Master Plan Update	45,000
CP 3709 – Dempsey Road Storm Drain Replacement	860,000
CP 3715 – Storm Drain System Rehab 17-19	400,000
CP 3718 – Storm Supervisory Control & Data Acquisition	200,000
Total Expenditures	1,505,000
Excess (deficiency) of revenues over (under) expenditures	(1,256,562)
Beginning and ending balance:	
Fund Balance, beginning of year	2,934,538
Fund Balance, end of year	$ 1,677,976

CIP Number	Project Description	% of the project funded with development fees	Construction commencement Date	Status Of Project
CP 3700 - Storm Drain System Rehabilitation	Prior work included storm drain system repairs at various locations and wetland riparian mitigation and maintenance work at Wrigley-Ford and Ford Creeks. The remaining work is required by Regional Water Quality Control Board and Army Corps of Engineer permits to inspect, repair, maintain, and submit reports on the Creek sites until February 2023.	100%	2008	In Process
CP 3709 - Dempsey Road Storm Drain Replacement	The work includes replacement of Dempsey Road storm drain pipelines and installation of two outfalls in Los Coches Creek at Dempsey Road. Project will construct a 36 inch diameter pipe within Dempsey Road between South Park Victoria and Los Coches Creek, approximately 1,100 linear feet.	54%	On hold as funding for construction will be defunded in FY20-21	In Process
CP 3715 - Storm Drain System Rehab 17-19	This project provides for the maintenance of the City's storm drain systems due to insufficient capacity and aging infrastructure. Work will include maintenance to pumps, electrical and mechanical systems at pump stations, and maintenance of City owned creeks and drainage ditches. Work will be programmed based on the	100%	2018	In Process

	new Storm Drain Master Plan and urban runoff program requirements.			
CP3718 – Storm Supervisory Control & Data Acquisition	This project provides a real-time data, such as wet well level and pump operational stat us to utility systems operators.	100%	2020	In Process

Inter-fund transfer or loan made description:
None

Refunds made from surplus fees and amount of any allocations made:
None

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution Amending the Classification Plan to Temporarily Suspend the Car Allowance for Executive Management Employees**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	1/5/2021
Staff Contact:	Jeannine Seher, Human Resources Director, 408-586-3086
Recommendation:	Adopt a resolution amending the classification plan to temporarily suspending the car allowance (specified in adopted Resolution No. 8980) for executive management effective beginning in January of 2021.

Background:
Executive Management employees are not organized nor represented for the purposes of collective bargaining and meeting and conferring over salary, benefits, and working conditions. However, in order to successfully attract and retain employees, the Milpitas City Council periodically provides direction and authorizes salary adjustments and/or fringe benefits modifications adopted during the budget process or timed with other bargaining units. On June 2, 2020, the City Council adopted Resolution No. 8980, which affirmed the benefit structure for Executive Management, including a monthly car allowance for those who were not assigned a City vehicle. Since the adoption of the budget and finding new ways to work while addressing the many challenges associated with the Covid-19 pandemic, the City's Executive Leadership team has remained committed to serving the constituents of the City of Milpitas and is primarily working from home. Travel to and from City offices on City business has diminished significantly.

City leadership acknowledges that the global pandemic and stay at home orders have resulted in unforeseen, significant decreases in revenues to the City. Unrepresented Miscellaneous and Safety Management have had the July 2021 raises eliminated. In light of the current circumstances, it is prudent to also temporarily suspend the City's adopted car allowance benefit until such time as the City Manager determines it is appropriate for staff to return to the office.

Analysis:
When the City Council adopted Resolution No. 8980 on June 2, 2020, it did so under extremely different circumstances. Although the Executive Leadership unrepresented employees do not bargain for their salaries, benefits or terms and conditions of employment, the City Manager's office met with these employees to discuss the fiscal situation and the need to lead by example. In light of all of the above, temporary suspension of the car allowance effective January 2021 would yield an additional savings of $39,600 through the end of the fiscal year.

Policy Alternative:
Alternative: Continue the car allowance as previously approved, or approve and authorize a lesser amount.

Pros: Will provide a previously committed benefit to a group of City employees who already have had a future salary increase eliminated.

Cons: The employees are not traveling on City business and are not holding in person meetings. With zoom webinar online meetings serving as the temporary current norm, and social distancing being a requirement, travel has been significantly restricted.

Reason for Recommendation: Temporary suspension of the car allowance until such time as the City Manager resumes in person operations, makes sense and assists with efforts to bridge the structural deficit.

Fiscal Impact:
The proposed action is projected to reduce anticipated expenditures by approximately $39,600 for the remainder of Fiscal Year 2020-21.

California Environmental Quality Act:
Not a project requiring environmental review under the California Environmental Quality Act (CEQA).

Recommendation:
Adopt a resolution amending the classification plan to temporarily suspending the car allowance (specified in adopted Resolution No. 8980) for executive management effective beginning in January of 2021.

Attachment:
Resolution

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE CLASSIFICATION PLAN TO TEMPORARILY SUSPEND CERTAIN FRINGE BENEFITS FOR CERTAIN UNREPRESENTED MANAGEMENT EMPLOYEES

WHEREAS, the City of Milpitas Unrepresented Management employees are not organized or represented for the purposes of meeting and conferring with the City in the areas of salary, benefits, and working conditions; and

WHEREAS, on December 17, 1968, the City of Milpitas established a Classification Plan adopted as Resolution No. 1626, which has been amended from time to time and which is in accordance with the Personnel Rules and Regulations of the City of Milpitas (Resolution No. 792, as amended); and

WHEREAS, amendments to the Classification are plan are necessary to account for changes within the organization, including transfer f duties, new job responsibilities, and adjustments to salary ranges and fringe benefits; and,

WHEREAS, on July 7, 1981, the City Council of the City of Milpitas adopted Resolution No. 3558 to authorize compensation and fringe benefits for all exempt employees and City Council; and

WHEREAS, on June 2, 2020, the City Council of the City of Milpitas adopted Resolution No. 8980 to authorize compensation and fringe benefits for all exempt employees and City Council which included a $550 monthly car allowance for Executive Management; and

WHEREAS, it is the desire of the City Council to amend the Classification plan to approve the administrative changes made to the fringe benefits for Unrepresented Management Employees as set out 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 hereby approves and authorizes the City Manager to temporarily suspend the $550 monthly car allowance as specified in the fringe benefits for Executive Management Unrepresented Employees, effective on January 1, 2021, until such time as the City Manager determines it is appropriate for staff to return to the office.

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

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve and Authorize the City Manager to Enter into a Side Letter to Amend the Memorandum of Understanding between the City and United Public Employees of California (UPEC Local 792), the Mid-Management and Confidential Unit**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	1/5/2021
Staff Contact:	**Jeannine Seher, Director of Human Resources, 408-586-3086**
Recommendation:	Approve and authorize the City Manager to enter into a side letter agreement with the United Public Employees of California (UPEC Local 792), the Mid-Management and Confidential Unit citing the correct section of the Government Code for temporary out of class pay.

Background:
On June 28, 2019, the City and the United Public Employees of California (UPEC Local 792), the Mid-Management and Confidential Unit entered into a Memorandum of Understanding (MOU) outlining the terms and conditions of employment through June 30, 2023. The MOU sets forth the agreement for matters involving wages, hours, and terms and conditions of employment. During the negotiations for 2019, the parties intended to clarify when and how an employee would be eligible for additional pay when working out of class. The agreement, intended to provide clarity by referencing the relevant sections of the government code, cited an incorrect section of the Government Code, making an unintended change to the MOU.

Analysis:
The MOU cites Government Code Section 20480 of the Public Employees' Retirement Law, which defines an out of class appointment is an appointment to an upgraded position or higher classification by an employer or governing board or body in a vacant position for a limited time. Section 20480 is intended to address compensation earnable for retirement purposes but does not provide the ability for the City to pay a differential for working out of class. Section 20480 is specific to tracking and reporting hours worked in an out-of-class position to CalPERS, but not who is eligible for an out-of-class assignment.

By erroneously citing this Government Code "definition" of out-of-class assignments, it has created an unintended consequence of restricting out-of-class assignments to positions that are vacant and eliminated the provision to provide out of class pay when an employee is performing higher duties as a result of a temporary absence.

Policy Alternative:

Alternative: Maintain the existing language as specified in the MOU.

Pros: Will continue to provide compensation earnable when an employee is appointed temporarily to serve in a position that is vacant.
Cons: The City often assigns employees temporary out of class pay when an employee assumes higher duties to cover when a staff member is on vacation or an extended leave of absence. Not addressing this error will limit a benefit that is available to all other bargaining groups in the City.

Reason for Not Recommending: The reference to Government Code Section 20480 was not intended to alter the terms in conditions of employment in this manner, but rather put forward to add clarity to the MOU. The current MOU language does not authorize out of class pay.

Fiscal Impact:
Any costs from potentially higher utilization of out of class pay will be absorbed in departmental budgets.

California Environmental Quality Act:
Approval of the recommendation is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b) (3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

Recommendation:
Approve and authorize the City Manager to enter into a side letter agreement with the United Public Employees of California (UPEC Local 792), the Mid-Management and Confidential Unit citing the correct section of the Government Code for temporary out of class pay.

Attachment:
Side Letter to MOU with UPEC Local 792, Mid-Management and Confidential Unit

Side Letter Agreement
By and Between
The City of Milpitas and the
United Public Employees of California, Mid-Management and Confidential Unit

The City of Milpitas, hereby referred to as "City" and the United Public Employees of California Mid-Management and Confidential Unit, hereby referred to as "Union," collectively as "the parties" execute this Side Letter Agreement regarding amendments to the existing Memorandum of Understanding ("MOU"). Any provision of prior Side Letters that are inconsistent with this Side Letter Agreement are no longer in effect.

MOU provision, Section 26.02 defines out-of-class assignments as an appointment to an upgraded vacant position by referencing Government Code Section 20480. Government Code Section 20480 is mis-cited, as this language is specific to tracking and reporting hours worked in an out-of-class position to CalPERS, but not who is eligible for an out-of-class assignment.

By erroneously citing this Government Code "definition" of out-of-class assignments, it has created an unintended consequence of restricting out-of-class assignments to positions that are vacant.

As such, the City and the Union agree to modify Section 26.02 effective July 1, 2019 as follows:

26.02 An out of class appointment is when an employee is approved in advance by the Department Head to temporarily work in a higher classification, due to a business need or vacancy. The employee must be eligible to work in the higher classification and perform all duties of that position.

A non-hourly employee assigned to work in an out-of-class capacity with fully upgraded duties or classification (100%) for two or more consecutive full work days shall qualify for Temporary Upgrade Pay as special compensation. An hourly employee assigned to work in an out-of-class capacity with fully upgraded duties or classification (100%) for two or more full work days within a pay period, whether consecutive work days or not, shall qualify for Temporary Upgrade Pay.

Employees assigned to upgraded duties or classification as described above shall be compensated at least 5% more than their salary or at the entrance step of the range of the higher classification, whichever compensation pattern is greater except where such increase exceeds the pay range allocated to the assigned position. The employee shall be compensated at the appropriate rate retroactive to the start of the assignment.

Per Government Code section 20480 of the Public Employees' Retirement Law, an employee working int an out of class position that is vacant during a recruitment period cannot exceed 960 hours worked in a fiscal year

For the City of Milpitas:

Jeannine M. Seher
Jeannine Seher
Human Resources Director

12/18/2020
Date

Steven McHarris
City Manager

Date

For the Union:

Ryan Heron, Union Representative
LIUNA/UPEC

12/9/2020
Date

Toni-Lynn Charlop
MidCon Representative

12/8/20
Date

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve and Authorize the City Manager to Enter into a Side Letter to Amend the Memorandum of Understanding (MOU) between the City and Milpitas Employee Association (MEA) (LIUNA/UPEC Local 792) regarding callback pay**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	1/5/2021
Staff Contact:	**Jeannine Seher, Director of Human Resources, 408-586-3086**
Recommendation:	Approve and authorize the City Manager to enter into a Side Letter to amend the Memorandum of Understanding (MOU) between the City and Milpitas Employees Association (MEA) (LIUNA/UPEC Local 792) amending the callback pay provisions as specified in the side letter.

Background:
On August 4, 2020, the City Council adopted a Memorandum of Understanding (MOU) between the City and the Municipal Employees Association (LIUNA/UPEC Local 792), outlining the terms and conditions of employment through June 30, 2023. During the negotiations for 2020, the parties intended to remove conflicting MOU language involving employee compensation when called back to the worksite. When the final document was presented to Council, the wrong MOU provision was stricken, inadvertently changing the terms and conditions of employment.

Analysis:
The MOU provision inadvertently stricken from the MOU was not the language that was agreed upon. In the spirit of maintaining positive labor relations, when the matter was discovered, the prior compensation practice was continued to afford the parties the opportunity to correct the MOU. Because the MOU was adopted by Council, the appropriate manner to make this correction is via a side letter. The necessity to utilize the employee call back provision occurs on an occasional but infrequent basis.

Policy Alternative:

Alternative: Maintain the existing language as specified in the MOU.

Pros: Will continue to provide compensation for call back pay in a narrower set of circumstances.
Cons: When the parties reached a tentative agreement, they did so by reaching an agreement to delete outdated and conflicting language. Maintaining the current provisions of the MOU does not accurate reflect the intention of the parties. Not addressing this error will limit a benefit that was previously agreed upon and can negatively impact the long-term relationship.

Reason for Not Recommending: The current MOU language does not reflect what the parties intended.

Fiscal Impact:
Any costs from utilization of call-back pay will be absorbed in departmental budgets.

California Environmental Quality Act:
Approval of the recommendation is not an activity defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b) (3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

Recommendation:
Approve and authorize the City Manager to enter into a Side Letter to amend the Memorandum of Understanding (MOU) between the City and Milpitas Employees Association (MEA) (LIUNA/UPEC Local 792) amending the callback pay provisions.

Attachment:
Side Letter to MOU with LIUNA/UPEC Local 792, Municipal Employees Association

Side Letter of Understanding
By and Between
The City of Milpitas and the Municipal Employees Association

The City of Milpitas, hereby referred to as "City" and the Municipal Employees Association (MEA), hereby referred to as "Union", collectively as "the parties" execute this Side Letter of Understanding ("LOU") regarding amendments to the existing Memorandum of Understanding ("MOU"). Any provision of prior LOUs or Side Letters of Understanding that are inconsistent with this LOU are no longer in effect.

MOU provision, Section 17.00 provides terms related to overtime compensation when an employee is asked to return to work after leaving the worksite. During the negotiations process the parties tentatively agreed to eliminate outdated language, striking out section 17.03 of the 2017-2020 language as demonstrated below.

SECTION 17.00 OVERTIME

17.01 Where, in the course of performing their duties, it is necessary for an employee to work more than their standard 37.5 or 40 hour workweek, said employee shall be compensated as described in this section.

17.02 A minimum of three hours pay or its equivalent in compensatory time off at the option of the employees shall be guaranteed for any employee, at the rate of time and one-half, who after leaving their employee's place of duty is required without prior notice to return for emergency duties.

~~17.03 A minimum of three hours pay or its equivalent in compensatory time off at the option of the employee shall be guaranteed for any employee, at the rate of time and one-half, who after leaving their employee's place of duty is required without prior notice to return for emergency duties between the hours of 10 p.m. and 5 a.m.~~

The parties recognize that the language presented to the Council and subsequently adopted was made in error and correct the language as follows:

SECTION 17.00 - OVERTIME

17.01 Where, in the course of performing their duties, it is necessary for an employee to work more than their standard 40-hour workweek, said employee shall be compensated as described in this section.

17.02 ~~A minimum of three hours pay or its equivalent in compensatory time off at the option of the employee shall be guaranteed for any employee, at the rate of time and one-half, who after leaving their employee's place of duty is required without prior notice to return for emergency duties between the hours of 10 p.m. and 5 a.m.~~ A minimum of three hours pay or its equivalent in compensatory time off at the option of the employees shall be guaranteed for any employee, at the rate of time and one-half, who after leaving their employee's place of duty is required without prior notice to return for emergency duties.

Sections 17.03 – 17.11 remain unchanged.

For the City of Milpitas:

Jeannine M. Seher Human Resources Director	Date
Steven McHarris City Manager	Date

For the Union:

Ryan Heron Union Representative, LIUNA	Date
Robert DeLong MEA President	Date

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Approve and Authorize the City Manager to Execute a Contract with HCI Systems for a Five-Year Not-to-Exceed Contract Amount of $208,660 for Fire Alarm and Fire Suppression System Services**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	1/5/2021
Staff Contacts:	Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602
Recommendation:	Approve and Authorize the City Manager to execute a Contract with HCI Systems for the Fire Alarm and Fire Suppression System Service, for an annual amount of $41,732 in the first year and a total not to exceed amount of $208,660.00, over the five year period, subject to the annual appropriation of funds.

Background:

In accordance with the California Code of Regulations (CCR) and National Fire Protection Association (NFPA), the City of Milpitas is required to regularly test, service, and repair all fire alarm and fire suppression systems located at City facilities. The CCR and NFPA provide specific testing, servicing, and repair guidelines based on the type of fire alarm and fire suppression systems that are in place. The City has fire alarm and fire suppression systems at City Hall, Public Works/Police Building, Community Center, Sports Center, Senior Center, Library, Garage, Fire Station 1, Ayer Pump Station, Gibraltar Pump Stations, and Sal Cracolice Recreation Center.

On August 5, 2015, the City entered into a five-year contract with Simplex Grinnell, renamed to Johnson Controls Fire Protection on June 22, 2018, to service the City's fire alarm and fire suppression systems. The contract is set to expire on August 4, 2020. To ensure that there was no interruption in fire alarm and fire suppression services, the City executed a four-month bridge contract with Johnson Controls Fire Protection on October 14, 2020. In order to provide continued service on the City's fire alarm and fire suppression systems, an Invitation for Bids (IFB) was issued to solicit proposals from qualified Contractors.

Analysis:

On October 21, 2020, the Purchasing Division released Invitation for Bid No. 2479 seeking proposals from qualified vendors with demonstrated experience in servicing fire alarm and fire suppression systems. The IFB 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) and a bid notice posted to PublicPurchase.com as well. Additionally, the IFB was published on the City website. Upon release, eleven firms received the solicitation notification and three firms downloaded the IFB documents.

The Purchasing Division received 3 proposals by 2:00 pm on the November 12, 2020 deadline in response to the IFB. All 3 proposals were reviewed for completeness, were accepted and continued in the evaluation process.

The three (3) companies that continued in the evaluation process were:

1. HCI Systems
2. ADT Commercial
3. Intelligent Technologies and Services

The evaluation committee reviewed proposals based on the final proposal cost to the City. The table below shows the final proposal cost, with the recommended firm highlighted in green:

Fire Alarm and Fire Suppression Services IFB No. 2479	HCI Systems	ADT Commercial	Intelligent Technologies and Services
Final Price	$41,732.00	$43,200.00	$72,646.00

Approval of the contract with HCI Systems will provide the City with continued fire alarm and fire suppression system service in accordance with federal and state regulations. The contractor will also be required to provide an annual report with complete inspection, testing, and maintenance and repair service records of the suppression. The contract term would be for five years from January 5, 2021 through January 3, 2026, with an annual compensation of $41,732 per year, and a five-year total not-to-exceed amount of $208,660.

Policy Alternative:

Alternative: Reject all bids and re-issue IFB.

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Pros: Allows City to explore pricing from additional vendors for this service.
Cons: Would result in a delay in providing fire alarm and fire suppression services for the City.

Reason not recommended: Fire alarm and fire suppression systems inspection maintenance is required per California Code of Regulations and NFPA.

Fiscal Impact:
There are sufficient funds available in the FY 2020-21 Public Works Facilities Operating Budget to cover the cost of the first year of this contract. Funding for the remaining years of this contract will be subject to annual appropriations.

California Environmental Quality Act:
This Project is exempt from CEQA under Class 1 - Section 15301 - Existing Facilities because they relate to the operation, repair, maintenance or minor alterations to a public facility involving no or negligible expansion of use.

Recommendation:
Approve and Authorize the City Manager to execute a Contract with HCI Systems for the Fire Alarm and Fire Suppression System Service, for an annual amount of $41,732 in the first year and a total not to exceed amount of $208,660, over the five year period, subject to the annual appropriation of funds.

Attachment
NA

MAINTENANCE SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND HCI SYSTEMS

1. PARTIES AND DATE.

This Agreement is made and entered into this day of _____ by and between the City of Milpitas, a municipal corporation organized under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City") and **HCI Systems**, a California corporation with its principal place of business at **3566 Investment Blvd., Hayward, CA 94545** ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing **Fire Alarm and Fire Suppression System Inspection, Testing, and Maintenance Services** to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

2.2 Project.

City desires to engage Contractor to render such services for the **Fire Alarm and Fire Suppression System Inspection, Testing, and Maintenance Services** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **Fire Alarm and Fire Suppression System Inspection, Testing, and Maintenance Services** maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term.

The term of this Agreement shall be from **January 6, 2021** to **January 4, 2026**, 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.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates **James Levers**, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates **Jennifer Felker** or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of **One Hundred Dollars and Zero Cents ($100.00)** per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to perform the Work while said dispute is decided by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor

shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor 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. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California 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 agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. 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.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

3.2.11 Insurance. Contractor 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, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Two-Hundred and Eight Thousand Six-Hundred Sixty Dollars and Zero Cents ($208,660.00)** without written approval of City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 California Labor Code Requirements

a. Contractor 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 $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor 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 Contractor and all subcontractors 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 Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, 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 Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor 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 Contractor or any subcontractor.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.4.4 Agreement Subject to Appropriation of Funds. The Contractor 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 any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, the Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and City Council. Contractor'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

3.5 General Provisions.

3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

HCI Systems
3566 Investment Blvd.
Hayward, CA 94545
Attn: Dario Canizalez, CFO

City:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Tony Ndah, Director of Public Works

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity**.** To the fullest extent permitted by law, Contractor shall defend, 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 alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with Counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.2.1 that may be brought or instituted against City or its officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials officers, employees, agents, or volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County, California. In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

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

3.5.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully 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 Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its 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.

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

3.5.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 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.

3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor 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 Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. 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 member, 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.

3.5.14 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.

3.5.15 Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover from the losing party attorney's fees and costs in an amount determined to be reasonable by a court of competent jurisdiction.

3.5.16 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations,

understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.19 Wage Theft Prevention.

3.5.19.1 Contractor, and any subcontractor 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.

3.5.19.2 BY SIGNING THIS AGREEMENT, CONTRACTOR 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 CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

3.5.19.3 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 Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor 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. Contractor or its subcontractor(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 Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor 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.

3.5.19.4 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.

3.5.19.5 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.

3.5.19.6 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 NEXT PAGE]

SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND HCI SYSTEMS

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

CITY OF MILPITAS
Approved By:

Steven McHarris, City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

HCI SYSTEMS

Signature

Name

Title

Date

1000000046

DIR Registration Number

Approved:

Walter C. Rossmann
Risk Manager/Director of Finance

Approved As To Content:

Tony Ndah, Director of Public Works

EXHIBIT "A"

SCOPE OF SERVICES

SCOPE OF WORK

The Contractor will provide all necessary certified and trained labor, supervision, machinery, tools, equipment, apparatus, and other resources required to perform the work required of this scope of work in accordance with manufacturer's standards and the most current and applicable NFPA standards.

Equipment By Location and Bid Form Supplement in **Exhibit C** provides a detailed list of equipment for each of the ten (10) City facility locations applicable to these detailed specifications.

I. FIRE ALARM SYSTEM EQUIPMENT

LOCATIONS 1-9: City Hall, Public Works/Police Bldg., Community Center, Sports Center, Senior Center, Library, Garage, Fire Station 1, Ayer & Gibraltar Pump Stations , Sal Cracolice Recreation Center

II. FIRE SUPPRESSION SYSTEM EQUIPMENT

LOCATIONS 1-10: City Hall, Public Works/Police Bldg., Community Center, Sports Center, Senior Center, Library, Garage, Fires Stations 1 & 4, Ayer & Gebraltar Pump Stations

The equipment lists provided are the best known available. The Contractor will be required to provide an annual report with complete inspection, testing, and maintenance service records.

Special Notes for Certain Locations

A. In general, the Contractor shall be responsible for restoring all equipment to normal position and operating condition to avoid disruption of service. Specifically, roller doors shall be returned to their normal position and functionality.
B. **Public Works/Police Bldg. & City Hall -** have Elevator recalls when smoke detectors in front of elevator doors activate, or smoke detector in elevator machine room. An escort will be required to service equipment located at the Police Department facility.

Two (2) Halon systems are included in the Police/Public Works buildings.

C. **Senior Center, Kitchen -** Roll-down shutters over windows that drop with the activation of fuseable link in front of these doors. When testing annually, assistance may be needed getting these properly reset (rolled up) again.

SERVICING REQUIREMENTS

I. Fire Alarm System Inspection and Testing

This work shall be performed in accordance with Chapter 14 "Inspection, Testing, and Maintenance" of the National Fire Alarm and Signaling Code – NFPA 72, 2013 Edition, in its entirety where applicable, or the most current edition as required by law or as directed by the City. All "May" options in the NFPA 72 requirements are "Shall" and are not optional.

A. Programming shall be charged at the appropriate hourly rate if done in house, and if done as a Pass Through, a 10% markup will be allowed, ONLY if a third party programmer is required.

Contractor must specify whether or not programming will be contracted out.

II. Fire Suppression Systems Inspection and Testing

Reports of applicable quarterly, semi-annual and annual inspections and tests shall be delivered in writing to the Public Works Manager, within 48 hours after completion of work. All reports for Fire Alarms, Halon Suppression Systems, and Wet Chemical Suppression Systems shall be reflective of all applicable NFPA Chapter requirements. All reports for Water Suppression Systems shall at a minimum use all applicable Automatic Extinguishing Systems (AES) Forms specific to that NFPA Chapter listed below.

A. Water Based System

Work shall be performed in accordance with the California Code of Regulations, Title 19, Division 1, Chapter 5 and NFPA 25 2013 “Inspection, Testing and Maintenance of Water Based Fire Protection Systems” in its entirety where applicable, or the most current edition as required by law or as directed by the City. All “May” options in NFPA 25 2013 requirements are “Shall” and are not optional.

B. Halon Based System

Work shall be performed in accordance with the California Code of Regulations, Title 24, Part 9, Chapter 80 and Chapter 6 NFPA 12A 2009 “Inspection, Maintenance and Testing” in its entirety where applicable, or the most current edition as required by law or as directed by the City. All “May” options in NFPA 12A 2009 requirements are “Shall” and are not optional.

C. Wet Chemical Based System

Work shall be performed in accordance with the California Code of Regulations, Title 24, Part 9, Chapter 80 and Chapter 7 of NFPA 17A 2009 “Inspection, Maintenance, and Recharging” in its entirety where applicable, or the most current edition as required by law or as directed by the City. All “May” options in NFPA 17A 2009 requirements are "Shall” and are not optional.

In the event future additions to the National Fire Alarm and Signaling Code – NFPA 72, 2013 or the California Code of Regulations, Title 19, Division 1, Chapter 5 and NFPA 25 2013, or the California Code of Regulations, Title 24, Part 9, Chapter 80 and Chapter 6

NFPA 12A 2009 or the California Code of Regulations, Title 24, Part 9, Chapter 80 and Chapter 7 of NFPA 17A 2009 are adopted during the life of the contract and the changes to any of the requirements under any chapter are of a material nature such that the effect on service requirements would necessitate a change in the price of the service, then at the applicable anniversary date, contractor shall be allowed to submit changes to the Scope of Work that are outside the then current chapter requirements. If changes to any chapter reflect a decrease in service levels then the City shall be entitled to negotiate a decrease in price.

III. General Servicing Requirements

All inspection, testing and maintenance services are to be completed in accordance with the recommended frequency per the applicable NFPA Standard.

1. Inventory.

The City of Milpitas has provided information about the type and general building location of the City's fire alarms and fire suppression systems to the best of its knowledge and ability. It is understood that the information is not entirely accurate. Therefore the Contractor shall at the first regularly scheduled quarterly inspection and testing, will work with the Facilities Maintenance staff to walk each City building to assess and document the physical location of each fire alarm and fire suppression system and all of their component parts. Contractor shall also use best practices to determine if an area has the appropriate number of pull stations and if they are properly labeled, with appropriate building signage clearly designating their location to City staff. The report shall be compiled and delivered to Facilities Maintenance Manager, in the form of an Excel spreadsheet, or other format as agreed upon by the parties.

2. Service Records.

The Contractor shall provide detailed service records that includes photos, tags, inspection and test results, , scheduled maintenance requirements and other recommendations as necessary to keep fire safety functions operating at all times.

3. Parts for Preventative Maintenance.

The replacement of all parts that may become worn or inoperable, or that otherwise affects the equipment's operability in any way shall require notification to the City's Public Works Manager or other designee prior to ordering and/or installing parts that are not covered under a maintenance warranty.

4. Warranty of Work.

The Contractor shall guarantee all services performed by the Contractor's service technicians, including all replaced parts, for a minimum of one (1) year. If an equipment failure or malfunction is determined to have occurred due to defective parts, workmanship or lack of preventive maintenance recommendation, Contractor shall correct the failure or malfunction at no additional expense to the City.

This warranty does not include service, repair or replacement or parts required as a result of Contractor's accident, neglect, abuse, misuse, alteration of equipment, or other improper operations. Breakdowns due to the integrity of the existing system are excluded.

EXHIBIT "B"

SCHEDULE OF SERVICES

Schedule for Inspection, Testing, and Maintenance Services

a. All service dates for scheduled inspection and testing services shall be coordinated between the Contractor and the City's Public Works Manager.

b. Within ten (10) working days after Notice of Award, the Contractor shall submit to the City's Public Works Manager for approval, a written quarterly schedule (for each contract year) as applicable for each required scheduled service and when the service is performed, confirm in writing, any necessary coordination with third party service providers such as the elevator maintenance contractor.

c. All work that does not involve the activation or testing of audio and visual devices shall be scheduled and performed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday – excluding City Holidays.

d. All work that involves the activation or testing audio and visual devices shall be scheduled and performed between the hours of 6:00 a.m. to 8:00 a.m., Monday through Friday – excluding City Holidays. City Hall shall be tested in this manner on Saturdays between the hours of 8:00 a.m. – 5:00 p.m.

e. In the event working hours and/or work days need to be adjusted, the changes must be approved, in writing by the City's Public Works Manager, prior to this work taking place. Any unapproved hours of work will be considered performed at the Contractor's own expense.

f. Prior to commencing work, Contractor's staff must check in with the Public Works Manager or designee and be escorted as required for certain facilities such as the Police Department. Upon completion of work, the Contractor shall notify the City's Public Works Manager/designee and have the completion verified by written sign off.

g. If deficiencies are identified, a punch list or the appropriate AES Form detailing the needed repairs will be created and delivered to the Public Works Manager or designee for written approval.

h. A Service Tag conforming to C.S.F.M. regulations must be securely attached to each fire alarm or fire suppression system at the time of service. Tag should include contractor name, address, phone number and month and year maintenance was performed and the identity of the person who performed the service.

EXHIBIT "C"

COMPENSATION

Contractor cost for Inspection, or replace and testing services will be **Forty-One Thousand Seven Hundred Thirty-Two Dollars and Zero Cents ($41,732.00)** Annually. See HCI Systems Cost in the **Equipment By Location** form below.

Invoicing and Payment.

a. For services satisfactorily rendered, and upon receipt and approval of the invoices, the City agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified in the bid and resulting contract agreement.

b. Payment shall be made monthly in arrears upon satisfactory performance of work and upon receipt of an invoice reviewed and approved by the City's Facilities Manager or City's designated representative.

c. The City's payment of an invoice does not necessarily reflect satisfaction and approval of services rendered.

d. The invoice must be submitted on the Contractor's letterhead signed by an authorized representative, and include:

i. The Purchase Order Number

ii. Invoice Number

iii. Contract/Project Title

iv. Monthly Period Covered

v. Description of the work completed for the period supported with a detailed statement of services rendered.

[ANNUAL COST SCHEDULE AVAILABLE ON THE FOLLOWING PAGE]

IFB 2479 – FIRE ALARM AND FIRE SUPRESSION SYSTEM INSPECTION, TESTING, MAINTENANCE AND REPAIR SERVICE

THIS FORM MUST BE ELECTRONICALLY COMPLETED AND UPLOADED BACK INTO THE PUBLIC PURCHASE SYSTEM

REVISED Exhibit B - Equipment By Location and Bid Form Supplement

FIRE ALARM DEVICE QUANTITIES PER BUILIDING LOCATION

EQUIPMENT DESCRIPTION	City Hall 455 E. Calaveras Blvd.	Public Works/Police 1265/75 N. Milpitas Blvd.	Community Center 457 E. Calaveras Blvd.	Sports Center 1325 E. Calaveras Blvd.	Senior Center 40 N. Milpitas Blvd.	Library Garage 120 N. Main St.	Fire Station #1 777 S. Main Street	Fire Station #4 775 S. Barber Lane	Ayer Pump Station 1429 E. Calaveras Blvd.	Gibraltar Pump Station 641 Gibralter Ct.	Sal Cracolice Recreation Center 775 Gardent Street	TOTALS
ALARM TYPE	*Edwards ES III*	*Simplex/4100-8001*	*Simplex 4005-9101*	*Simplex 4010-ID Net NAC Extender*	*Gamewell Fire Control Instruments E3*	*Honeywell Notifier Fire Warden 100*	*Pitney Notifier Model SFP-1024*	*N/A*	*Simplex 4001 & Silent Knight Dialer*	*Simplex 4001 & Silent Knight Dialer*	*Edwards ES 3*	
Last Annual or Semi Date												
Chiller Fire Panel		1										1
FACP (Fire Alarm Control Panel)		1	1	2	1	1	1		1	1	1	10
FCPS (Horn/Strobe Power Supplies)		1	1	2	1	2	1		1	1		10
Annunciators	1				1	1					1	3
Manual Pull Stations	18	12	4	22	13	9	4		2	2	7	93
Smoke Detectors	30	19	8	22	9	16	12		8	16	2	142
15 cd Strobe Only	46											46
30 cd Strobe Only	5											5
110 cd Strobe Only	4											4
Control Relay Module	6										3	6
Single Input Module	7										1	7
Dual Input Module	5										1	5
Strobes		6	4		9	17						36
Heat Detectors	3					2						5
Horn Strobes	57	15	4	38	25	31			2	2	10	184
Strobes Only	55											
Horns Only		18			25	1						44
Water Flow Monitors	8	3	1	1	2	3	1	1			1	21
Tamper Monitors		3	1	1	2	5	1	1			1	15
PIV Monitors	1	3	1	1	1	1	1	1			1	11
Sprinkler Heads	896	499	139	237	221	789	135	61	4	4	55	3040
Electromagnetic Door Holders	4	4										8
Booster Power Supply	3										1	3
Valve Tamper	8									1	1	9
Roll-up Doors/Shutters	0	1			1	3						5
Elevator Recalls	2	4										6
Monitored Halon System Last Annual or Semi Date __/__/__	0	1										1
SUMMARY OF ALARM SYSTEM INSPECTION, TESTING AND MAINTENANCE COSTS PER LOCATION												
Total Annual Cost	**$ 2,590.00**	**$ 2,180.00**	**$ 990.00**	**$ 1,290.00**	**$ 990.00**	**$ 1,290.00**	**$ 990.00**	**$ -**	**$ 980.00**	**$ 980.00**	**$ 980.00**	
											TOTAL	**$ 13,260.00**

FIRE SUPPRESSION SYSTEM DEVICE QUANTITIES PER BUILIDING LOCATION

EQUIPMENT DESCRIPTION	City Hall 455 E. Calaveras Blvd.	Public Works/Police 1265/75 N. Milpitas Blvd.	Community Center 457 E. Calaveras Blvd.	Sports Center 1325 E. Calaveras Blvd.	Senior Center 40 N. Milpitas Blvd.	Library Garage 120 N. Main St.	Fire Station #1 777 S. Main Street	Fire Station #4 775 S. Barber Lane	Ayer Pump Station 1429 E. Calaveras Blvd.	Gibraltar Pump Station 641 Gibralter Ct.	Sal Cracolice Recreation Center 775 Gardent Street	TOTALS
SYSTEM TYPE	*Wet-automatic*	*Wet-automatic*	*Wet-automatic*	*Wet-automatic*	*Wet-Automatic & Wet Chemical*	*Wet-automatic*	*Wet-automatic*	*Wet-Automatic*	*Wet-automatic*	*Wet-Automatic*		
Last 5-Year Test Date	Feb-'2010	Nov-'2012	Nov-'2012	Nov-'2012	Installed July-'2010	Oct-'2013	Feb-'2010	Oct-'2011	Never Tested	Never Tested		
Last Annual or Semi Date												
Sprinkler Riser(s)	3	2	1	1	1	1	1	1	1	1		13

Viking Elec./Phnu.Double Interlock Dry PreAction System	1											
Post Indicator Valve(s)	3	2	1	1	1	1	1	1	1	1		13
Butterfly/OS/Backflow Valve(s)	3	2	1	1	1	1	1	1	1	1		13
Hose Valve(s)	3	2	1	1	1	1	1	1	1	1		13
Standpipe(s)	3	2	1	1	1	1	1	1	1	1		13
Hydrants		2		1	1							4
Fire Department Connections	1	1	1	1	1	1	1	1	1	1		10
Water Flow Switch(s)	8	2	1	1	1	1	1	1	1	1		18
Tamper Switch(s)	8	2	1	1	1	1	1	1	1	1		18
Exterior Audible Bell								1	1	1		3
Riser Check/Alarm Valve	3	2	1	1	1	1	1	1	1	1		13
Riser Alarm Valve Strainer	3	2	1	1	1	1	1	1	1	1		13
Viking PCL 300 Wet Chemical Hood System (1 tank) Last Annual or Semi Date __/__/__					1							1
Halon (3 tanks) Last Annual or Semi Date __/__/__		1										1
SUMMARY OF SUPPRESSION INSPECTION, TESTING AND MAINTENANCE COSTS PER LOCATION												
Annual Cost	$ 2,560.00	$ 2,750.00	$ 695.00	$ 695.00	$ 695.00	$ 695.00	$ 695.00	$ 695.00	$ 695.00	$ 695.00	$ 695.00	
Quarterly Cost for **3 Quarters**	$ 1,872.00	$ 1,500.00	$ 1,135.00	$ 1,125.00	$ 1,125.00	$ 1,125.00	$ 1,125.00	$ 1,125.00	$ 1,125.00	$ 1,125.00	$ 1,125.00	
5-Year Cost ONLY - Excluding Annual	$ 450.00	$ 295.00	$ 295.00	$ 295.00	$ 295.00	$ 295.00	$ 295.00	$ 295.00	$ 295.00	$ 295.00	$ 295.00	
Total Annual Cost	$ 4,882.00	$ 4,545.00	$ 2,125.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	
										TOTAL		$ 28,472.00

SUMMARY OF ALARM & SUPPRESSION SYSTEM INSPECTION, TESTING AND MAINTENANCE COSTS PER LOCATION

	City Hall	Public Works/Police	Community Center	Sports Center	Senior Center	Library Garage	Fire Station #1	Fire Station #4	Ayer Pump Station	Gibraltar Pump Station		
Total Annual Cost - Alarms	$ 2,590.00	$ 2,180.00	$ 990.00	$ 1,290.00	$ 990.00	$ 1,290.00	$ 990.00	$ -	$ 980.00	$ 980.00	$ 980.00	
Total Annual Cost - Suppression	$ 4,882.00	$ 4,545.00	$ 2,125.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	$ 2,115.00	
Total Annual Cost	$ 7,472.00	$ 6,725.00	$ 3,115.00	$ 3,405.00	$ 3,105.00	$ 3,405.00	$ 3,105.00	$ 2,115.00	$ 3,095.00	$ 3,095.00	$ 3,095.00	
									GRAND TOTAL ANNUAL COST			$ 41,732.00

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 liit 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 appropriates 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 appropriates 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.

<u>THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS</u>

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 a Contract with Silicon Valley Fire for a for a Five-Year Not-to-Exceed Contract Amount of $130,000 for the Fire Extinguisher Inspection and Testing Services**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	1/5/2021
Staff Contacts:	Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602
Recommendation:	Approve and Authorize the City Manager to execute a Contract with Silicon Valley Fire for the Fire Extinguisher Inspection and Testing Service, for an annual amount of $26,000 in the first year and a total not to exceed from $130,000.00, over the five year period, subject to the annual appropriation of funds.

Background:

In accordance with California Code of Regulations, Title 19, Division 1, Chapter 3 and the most current edition of the Regulations and Standards of the California State Fire Marshal for Portable Fire Extinguishers, the City of Milpitas is required to regularly inspect, service, and repair all City-owned fire extinguishers. Fire extinguishers are located at City facilities and installed in the City's vehicle fleet. The City has multiple fire extinguisher types, including Dry Chemical, Carbon Dioxide (Co2), Halon, Water, and Metal, that are placed throughout city facilities and vehicles as appropriate. The majority of the City's fire extinguishers are re-usable, and thus subject to monthly inspections, annual maintenance and recharging, and repair as needed. The annual recharge ensures that there is sufficient extinguishing agent to control a fire and is expected to last for at least one year from the date of the annual service.

On August 5, 2015, the City entered into a five-year contract with Battalion One Fire Protection to service the City's fire extinguishers. The contract expired on August 4, 2020. To ensure that there was no interruption in fire extinguisher services, the City executed a four-month bridge contract with Battalion One Fire Protection on September 29, 2020. In order to provide continued service on the City's fire extinguisher services inspection, maintenance, and repair, an Invitation for Bids (IFB) was issued to solicit proposals from qualified Contractors.

Analysis:

On October 14, 2020, the Purchasing Division released Invitation for Bid 2481 seeking proposals from qualified vendors with demonstrated experience in servicing fire extinguishers. The IFB 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) and a bid notice posted to PublicPurchase.com as well. Additionally, the IFB was published on the City website. Upon release, six firms received the solicitation notification and six firms downloaded the IFB documents.
The Purchasing Division received 3 proposals by 2:00 pm on the November 4, 2020 deadline in response to the IFB. All 3 proposals were reviewed for completeness, were accepted and continued in the evaluation process.

The three (3) companies that continued in the evaluation process were:

1. Silicon Valley Fire, Inc.
2. Cintas Corp. #2
3. Battalion One Fire Protection

The evaluation committee reviewed proposals based on the final proposal cost to the City. The table below shows the final proposal costs, with the recommended firm highlighted in green:

Fire Extinguisher Services IFB No. 2481	Silicon Valley Fire, Inc.	Cintas Corp. #2	Battalion One Fire Protection
Final Price	$25,894.00	$28,696.80.	$36,803.00

Approval of the contract with Silicon Valley Fire will provide the City with continued fire extinguisher service in accordance with federal and state regulations. The contractor will also be required to provide an annual report with complete inspection, testing, and maintenance and repair service records of the equipment.
The contract term would be for five years from January 5, 2021 through January 4, 2026, with an annual compensation $26,000 per year, and for a five-year total not-to-exceed amount of $130,000.

Policy Alternative:

Alternative: Reject all bids and re-issue IFB.
Pros: Allows City to explore pricing from additional vendors for this service.
Cons: Would result in a delay in providing fire extinguisher services for the City.

Reason not recommended: Fire extinguisher maintenance is required per California Code of Regulations.

Fiscal Impact:
There are sufficient funds available in the FY2020-21 Public Works Facilities Operating Budget to cover the cost of the first year of this contract, no additional budget appropriations are needed at this time. Funding for the remaining years of this contract will be subject to annual appropriations.

California Environmental Quality Act:
This Project is exempt from CEQA under Class 1 - Section 15301 - Existing Facilities because they relate to the operation, repair, maintenance or minor alterations to a public facility involving no or negligible expansion of use.

Recommendation:
Approve and Authorize the City Manager to execute the Contract with Silicon Valley Fire for the Fire Extinguisher Inspection and Testing Service for a total amount not to exceed from $130,000.

Attachment
NA

MAINTENANCE SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND SILICON VALLEY FIRE INC

1. PARTIES AND DATE.

This Agreement is made and entered into _____ by and between the City of Milpitas, a municipal corporation organized under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City") and **Silicon Valley Fire Inc.**, a California corporation with its principal place of business at **117 Bernal Road 70-341, San Jose, CA 95119** ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing **Fire Extinguisher Inspection, Repair or Replacement and Testing** services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

2.2 Project.

City desires to engage Contractor to render such services for the providing **Fire Extinguisher Inspection, Repair or Replacement and Testing** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional providing **Fire Extinguisher Inspection, Repair or Replacement and Testing** maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term.

The term of this Agreement shall be from **December 15, 2020** to **December 14, 2025**, 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.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates **James Levers**, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates **Chuck Gardner** or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of One Hundred Dollars and Zero Cents ($100.00) per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to perform the Work while said dispute is decided by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor

shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor 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. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California 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 agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. 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.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

3.2.11 Insurance. Contractor 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, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 Bonds.

3.2.13.1 Performance Bond. If required by law or otherwise specifically requested by City in Exhibit "D" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "D" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with

Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.2.14 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **One Hundred Thirty Thousand Dollars and Zero cents ($130,000.00)** without written approval of City's City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 California Labor Code Requirements

a. Contractor 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 $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor 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 Contractor and all subcontractors 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 Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, 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 Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor 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 Contractor or any subcontractor.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.4.4 Agreement Subject to Appropriation of Funds. The Contractor 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 any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, the Agreement will terminate, without

penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and City Council. Contractor'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

3.5 General Provisions.

3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

Silicon Valley Fire, Inc
117 Bernal Road 70-341
San Jose, CA 95119
Attn: Chuck Gardner

City:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Tony Ndah, Director of Public Works

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity**.** To the fullest extent permitted by law, Contractor shall defend, 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 alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with Counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.2.1 that may be brought or instituted against City or its officials, officers, employees, volunteers and agents. Contractor

shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials officers, employees, agents, or volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County, California. In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

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

3.5.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully 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 Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its 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.

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

3.5.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 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.

3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor 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 Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. 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 member, 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.

3.5.14 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.

3.5.15 Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover from the losing party attorney's fees and costs in an amount determined to be reasonable by a court of competent jurisdiction.

3.5.16 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.19 Wage Theft Prevention.

3.5.19.1 Contractor, and any subcontractor 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.

3.5.19.2 BY SIGNING THIS AGREEMENT, CONTRACTOR 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 CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

3.5.19.3 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 Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor 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. Contractor or its subcontractor(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 Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor 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.

3.5.19.4 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.

3.5.19.5 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.

3.5.19.6 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 NEXT PAGE]

SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND SILICON VALLEY FIRE INC

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

CITY OF MILPITAS
Approved By:

Steven 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:

Tony Ndah, Public Works Director

SILICON VALLEY FIRE INC

Signature

Name

Title

Date

1000023601
DIR Registration Number (If Applicable)

EXHIBIT "A"

SCOPE OF SERVICES

Overview:

This agreement is for the servicing of rechargeable fire extinguishers and repairing or replacing extinguishers, as necessary. All City owned rechargeable fire extinguishers must be inspected, serviced, and repaired or replaced in accordance with California Code of Regulations, Title 19, Division 1, Chapter 3 which includes the Regulations and Standards of the California State Fire Marshal for Portable Fire Extinguishers October 24, 2014 edition.

The Contractor shall provide all labor, supplies, parts, supervision, tools, equipment, transportation and all effort necessary to perform extinguisher servicing.

Contractor Requirements:

1. Contractor shall carry all necessary insurance, licenses and permits required to perform Fire Extinguisher Services for the City. Both the company and the service technicians that work on the contract awarded from this solicitation shall be certified and licensed by the California Office of the State Fire Marshal (C.S.F.M.).
2. Contractor personnel, while working in or on City owned or leased premises, shall wear distinctive uniform clothing. The uniform shall have the vendor's name affixed to the uniform.
3. Contractor must have certified DOT Hydro Test equipment at their facility or must have a letter of "Reciprocal Agreement" on file with the State Fire Marshal with another licensed concern who is an authorized Hydro Test company, at the time the bid is submitted.
4. NO SUBCONTRACTING IS PERMITTED.

Additional information on the technical requirements for this solicitation is included in the detailed specifications section of this document.

Scope of Work:

The Contractor will provide Fire Extinguisher Inspection, Repair or Replace and Testing Service to be provided on an as-needed basis in accordance with the California Code of Regulations, Title 19, Division 1, Chapter 3 for the following equipment at various City locations:

1. Extinguisher Types:
2. Dry Chemical
3. Carbon Dioxide (Co2)
4. Halon
5. Water
6. Metal

The City reserves the right to add or delete equipment during the term of the contract, as is deemed necessary. A more detailed list of equipment by location is provided as Exhibit B- Cost Schedule Equipment By Location.

Annual Maintenance:

Annual maintenance shall be performed in accordance with Title 19, Article 6. Inspection, Maintenance and Recharging, Section 575 “Servicing General”, Section 575.1 “Maintenance and Required Service Intervals”, Section 575.2 “Maintenance Requirements”, Section 575.3 “Maintenance Procedures”, and shall specifically adhere to all requirements in “Table 4 – External Examination Maintenance Checkpoints”, as listed therein, for all fire extinguishers in City buildings and vehicles. Annual tear down and recharge is not required unless specifically indicated as a result of findings from the inspection procedure detailed in Table 4.

5/6 Year Tear Down:

When, due to age or findings from Table 4, tear down shall include all of the requirements listed under Annual Maintenance above.

Inventory:

The City has provided information about the type, size, and general building location of the City’s fire extinguishers to the best of its knowledge and ability. It is understood that the information is not entirely accurate. Therefore the Contractor shall at the first regularly scheduled annual inspection and testing, will work with Facilities Maintenance staff to walk each City building and assess and document the physical location, type, size (designation of size shall equal weight which shall be the fill weight of the retardant), and use of a proper bracket, of each fire extinguisher.

Contractor shall also use best practices to determine if an area has the appropriate type, size and number of extinguishers and if they are properly labeled, with appropriate building signage clearly designating their location to City staff. The report shall be compiled and delivered to Facilities Public Works Manager, in the form of an Excel spreadsheet, or other format as agreed upon by the parties. Contractor shall update the inventory annually, excluding City vehicles.

Recharging/Repair/Servicing:

Each rechargeable City owned portable fire extinguisher shall be inspected, serviced and repaired/replaced in accordance with the most current California Code of Regulations, Title 19, Division 1, Chapter 3 and/or as directed by City.

Extinguishers shall not require servicing while in storage. The City will notify the Contractor when an extinguisher is discharged. After an extinguisher is discharged, the extinguisher shall be recharged and internally inspected by the Contractor in compliance with the manufacturer’s authorized recharging procedures.

Extinguishers shall hold a charge for one (1) year from date of service. If the extinguisher fails to hold its charge, the Contractor shall be responsible for recharging the extinguisher, including any repairs and/or parts necessary, at no cost to the City, unless it was determined that the cause for the leak was failure of a part not replaced by the Contractor. Upon notices from the City, the Contractor shall, at its own expense, promptly and properly replace any and all improper work and material that may become apparent within a one-year period from the date of acceptance by the City.

Contractor shall furnish all routine repair and replacement parts at manufacturers list price plus 10%. This includes, but is not limited to:

- Adapters
- Extinguisher agents
- Propellant cartridges

- Hoses
- Pull pins
- Nozzles
- 0-rings
- Seals
- Valves

Parts shall be matched to the manufacturer's published requirements.

Inspections and Testing:

Fleet Vehicles, including Police and Fire vehicles, with dry chemical based extinguishers require internal repair or replacement (tear down) examinations and recharge and hydrostatic testing (or replacement) every 5 years. Fire vehicles with water based extinguishers require internal repair or replacement (tear down) examinations and recharge every year and hydrostatic testing every five (5) years.

Fire extinguishers (all types) located in City buildings require internal repair or replacement (tear down) examinations and recharge every 6 years and hydrostatic testing (or replacement) every 12 years as required by the C.S.F.M. For purposes of repair or replacement, hydrostatic tests required during the same calendar year shall be performed at the time of the annual repair or replacement or recharge.

Service Tag:

A service tag conforming to C.S.F.M. regulations must be securely attached to each fire extinguisher at the time of service. Tag should include vendor name, address, phone number and month and year repair or replacement was performed on each extinguisher. In addition, the tag shall identify the person who performed the service.

New Purchase or Replacement of Fire Extinguishers:

The Contractor shall notify the Facilities Public Works Manager, when any unit needs total replacement. If, for whatever reason, an extinguisher is removed from City premises by the Contractor, the Contractor shall leave a loaner of the same size and type, if not otherwise available at the City location.

The Contractor shall not perform repair or replacements on any portable fire extinguisher if the cost of such repairs shall exceed 50 percent of the current manufacturer's list price for the same type of unit with identical capacity without the Facilities Public Works Manager's approval. All new or replacement extinguishers shall be C.S.F.M. approved; new and unused. Replacement extinguishers shall be installed using authorized manufacturer's fixtures (brackets) to properly affix extinguishers in any building or vehicle.

Per unit pricing for installing new fire extinguishers including delivery and mounting brackets shall be based upon the manufacturer's list price plus 10%.

Materials Safety Data Sheet:

It is required by law that all hazardous materials must be identified and be accompanied with a "Material Safety Data Sheet" (MSDS) which is required at time of delivery of new purchase or replacement fire extinguishers, which shall be delivered to the Facilities Public Works Manager.

Extinguisher Recall:

Contractor shall notify the City when a recall is imposed on an extinguisher. Notification shall include the reasons for the recall and procedures for replacement and the disposition of recalled extinguishers.

Response:

Contractor shall respond within 24 business hours of notification by City Facilities Public Works Manager for service calls. This includes, but is not limited to, picking up equipment requiring off site service within 24 business hours. Equipment must be serviced and returned within ten (10) business days of pick up. Contractor shall respond within four business hours of notification by City personnel for emergency service.

If, for whatever reason, an extinguisher is removed from City premises by the Contractor, the contractor shall leave a loaner of the same size and type. Loaner extinguishers supplied to the City shall be at no charge to the City. Should the City discharge the loaner, the cost of recharging shall be paid by the City.

Disposal of Fire Extinguishers:

When a fire extinguisher has reached the end of its prescribed life based on law and/or regulation, or when a fire extinguisher has reached the end of its useful life based on wear, the contractor shall discharge and disassemble the unit and recycle all component parts including retardant (where possible) using industry “Best Practices”.

Records and Reports:

All records of completed service shall be delivered to the Facilities Public Works Manager.

EXHIBIT "B"

SCHEDULE OF SERVICES

Each assigned task identified in the scope of work shall be completed by the Contractor by the deadline mutually agreed upon by Contractor and City. Any anticipated delays shall be immediately communicated by the Contractor to appropriate City staff.

Contractor shall provide the following inspections as explained in the scope of work:

1. Annual Maintenance
2. 5/6 Year Tear Down
3. Fire Extinguisher Inventory
4. Recharging/Repair/Servicing
5. Inspections and Testing
6. 24 Hour Response

EXHIBIT "C"

COMPENSATION

Contractor cost for Inspection, repair or replace and testing services will be **Twenty-Five Thousand Eight Hundred and Ninety-Four Dollars and Zero Cents ($25,894.00)** Annually. See Silicon Valley Fire Cost Schedule next page.

Contractor will charge **Ten Percent (10%)** cost markup for Fire Extinguisher repair Parts.

Contractor will charge **Ten Percent (10%)** cost markup for Facility Fire Extinguisher replacement.

Contractor will charge **Ten Percent (10%)** cost markup for Vehicle Fire Extinguisher replacement.

Invoices:

Invoices shall be mailed directly to the City of Milpitas Facilities Public Works Manager. Contractor will provide the following breakdown of information in written form after each service call on each invoice:

1. Location/City Department

2. Date of service

3. Name and license number of technician who performed service.

4. Complete description of service performed including type and weight of extinguisher(s)

5. Quantity of units serviced and extinguisher units replaced

6. Extinguisher units replaced must be individually listed with serial numbers and priced in accordance with contract unit pricing requirements for documentation of manufacturer's list price plus 10%

7. Separately list hydro-testing and any tear down with official certification records, signed by the technician who conducted the test.

8. Separately list vehicle extinguisher charges and facility extinguisher charges.

9. Documentation as to any other related service or replacements required

[ANNUAL COST SCHEDULE AVAILABLE ON THE FOLLOWING PAGE]

IFB 2472– FIRE EXTENGUISHER REPAIR OR REPLACEMENT SERVICE (R)

THIS FORM MUST BE ELECTRONICALLY COMPLETED AND UPLOADED BACK INTO THE PUBLIC PURCHASE SYSTEM

Exhibit B - Equipment By Location

Silicon Valley Fire Cost Schedule

FIRE EXTINGUISHER DEVICE QUANTITIES PER BUILIDING LOCATION

		City Hall *455 E. Calaveras Blvd.*	Community Center *457 E. Calaveras Blvd.*	Senior Center *40 N. Milpitas Blvd.*	Public Works / Police,Corp Yard *1265/75 N. Milpitas Blvd.*	All Fleet Vehicles	Sports Center 1325 E. Calaveras Blvd.	Library Garage *120 N. Main St.*	Fire #1 *777 S. Main St*	Fire 2 1263 Yosemite	Fire 3 45 Midwick	Fire 4 775 Babrer Lane	ALL Fire Vehicles	Ayer Pump Station *1429 E. Calaveras Blvd.*	Gibraltar Pump Station *641 Gibraltar Ct.*	Cracolice Bldg. 791 Garden st	Jose Higuera *At N. Park Vistoria & Wessex Place*	Main Sewer Lift Station *1425 N. McCarthy Blvd.*	TOTAL QUANTITIES (Est.)	UNIT PRICING	SERVICE BID AMOUNT
	TESTING:																				
	Annual Repair or Replace (All Sizes) Cost																		475	$5	2375
	Disposal (All Sizes) Cost																		475	$0	0
	EXTINGUISHER TYPE & SIZE:																				
Group A - No Hydro, 5 Year Replacement	**2.5 lb. Dry Chemical** Replacement Cost														2				2	$36	72
	4 lb. Dry Chemical Replacement Cost																				0
	5 lb. Dry Chemical Replacement Cost	12	5	8	33	189	8	14	16	2	2	2	22	3	3	5	2	8	334	$42	14028
	***																		0		
Group B	**10 lb. Dry Chemical** Replacement Cost	4							1				2						7	$66	462
	15 lb. Dry Chemical Replacement Cost												4		1				5	$99	495
	20 lb. Dry Chemical Replacement Cost	5			8														13	$128	1664
	5/6 Year Tear Down Cost																		25	$10	250
	5/12 Year Hydro Cost																		25	$13	325
	***																				
Group C	**5 lb. CO2** Replacement Cost								1				7						8	$140	1120
	5/6 Year Tear Down Cost																		8	$10	80
	5/12 Year Hydro Cost																		8	$16	128
	***																				
Group D	**15 lb. Halon** Replacement Cost				4										1				5	$610	3050
	5/6 Year Tear Down Cost																		5	$18	90
	5/12 Year Hydro Cost																		5	$16	80
	***																				
Group E	**30 lb. Sodium Cloride Class D** Replacement Cost												1						1	$590	590
	5/6 Year Tear Down Cost																		1	$16	16
	5/12 Year Hydro Cost																		1	$13	13
	***																				
Group F - Annual Tear Down, 5 Year Hydro	**2.5 gal. Water** Replacement Cost												6						6	125	750
	Annual Tear Down																		6	$10	60
	5 Year Hydro																		6	$13	78
Group F - Annual Tear Down, 5 Year Hydro	**2.5 gal. Wet Chemical Kitchen Class K** Replacement Cost			1															1	$145	145
	5 Year Tear Down																		1	$10	10
	5 Year Hydro																		1	$13	13
																				Total	$ 25,894.00

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 liit 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 appropriates 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 appropriates 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.

<u>THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS</u>

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:	**Per Mayor's Recommendations, Re-Appoint 1 Planning Commissioner and Appoint 1 New Veterans Commissioner**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	1/5/2021
Contact:	**Mayor Rich Tran, 408-586-3029**
Recommendation:	Per Mayor Tran's recommendations, (1) re-appoint Planning Commissioner Bill Chuan to a new 3-year term to expire in December 2023, and (2) newly appoint Victorino Monzon to the Milpitas Veterans Commission to a currently vacant 3-year term that will expire in February 2022.

Background:
Milpitas Planning Commission is composed of seven members (no alternates), who serve in terms of three years. There is currently one vacancy on the Commission. All members are eligible to serve a maximum of three consecutive terms, and must be residents of Milpitas and registered voters. Two Commissioners' terms expired at the end of December 2020 and they may be considered for re-appointment upon the Mayor's recommendation to the City Council, which must affirm the appointments. Mr. Bill Chuan was initially appointed to the Planning Commission on February 26, 2019 and seeks to continue serving. Mayor Tran recommends Commissioner Chuan for re-appointment to his second term of three years.

Milpitas Veterans Commission consists of seven member and two alternates. Presently, there is one vacant Commissioner seats and two vacant Alternate Member seats on the Commission. Mayor Tran recommends Mr. Victorino Monzon for appointment to the vacant Commission seat to fill in a three-year term that will expire in February of 2022. All members of the Veterans Commission must be Milpitas residents, who have served or are currently serving in a branch of U.S. military. Munzon is retired US Navy and his application is included in the Council agenda packet.

Recommendation:
Per Mayor Tran's recommendations, (1) re-appoint Planning Commissioner Bill Chuan to a new 3-year term to expire in December 2023, and (2) newly appoint Victorino Monzon to the Milpitas Veterans Commission to a currently vacant 3-year term that will expire in February 2022.

Attachments:
Current Veterans Commission applications

COMMISSION APPLYING FOR:	Veterans Commission
Name	Christopher Raye Martin
Address Type	Residence
Address	1850 Blue Spruce Ct
City	Milpitas
Postal/Zip Code	95035
Mobile Number	(408) 726-3786
E-Mail Address	rayemart1977@gmail.com

City Clerk's Office
SEP 29 2020
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Present Employer	Department Of Veteran's Affairs
Business Address (Optional)	3801 Miranda Ave
City	Palo Alto
Postal / Zip code	94304

Occupation	Lead Medial Support Assistant
Education: If Youth Advisory Commission applicant, indicate your grade/school:	A BS in Health Care Management
College, Professional, Vocational, or other schools attended	Community College of the Air Force, Deanza, Devry
Major Subject	Health Care Management
Degree	BS

List community organizations to which you belong or have belonged (additional information may be attached).

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Branch of Military	United States Air Force

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):
As a US Air Force Vet and VA employee I have over 20 years experience with interactions with my fellow veterans.

Date	Sep 26, 2020

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Christopher Raye Martin

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

COMMISSION APPLYING FOR:	Veterans Commission
Name	Victorino M Monzon
Address Type	Residence
Address	684 Princess Place
City	Milpitas
Postal/Zip Code	95035
Mobile Number	(408) 889-3074
E-Mail Address	vmonzon@comcast.net

City Clerk's Office
DEC 11 2020
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Present Employer	Retired
Other Phone	(408) 262-8708
Business Address (Optional)	Lam Research, KLA Tencor, Accuray, Varian Medical Sys

Occupation	Retired EE/CS Engineer; Retired US Navy Commander (24yrs... E-5 and 0-5)
Education: If Youth Advisory Commission applicant, indicate your grade/school:	Coronado High, Coronado, Calif
College, Professional, Vocational, or other schools attended	Univ New Mexico (EE/CS); Univ Southern Calif; Instructor Naval Flight Officer; Navy Elect Tech
Major Subject	Systems Mgmt
Degree	Master Science (USC)

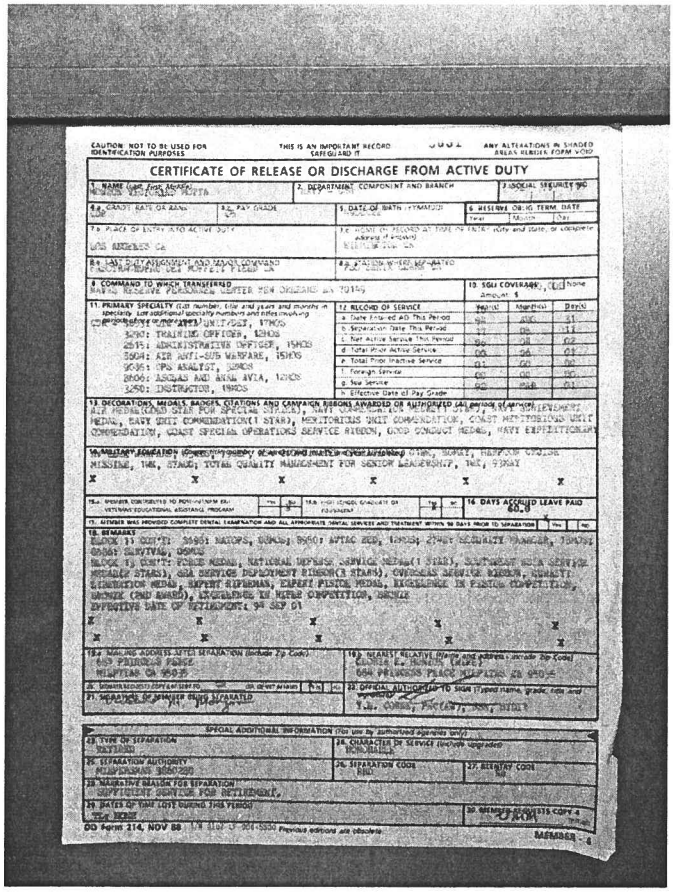
List community organizations to which you belong or have belonged (additional information may be attached).

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Branch of Military	US Navy
Officer	Commander

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):
6 years Navy Enlisted (promoted to E-5 in 21months service) 18 years Commissioned; Navy P-3 Orion Tactical Coordinator / Mission Commander; 3800 flight hours; Desert Storm combat vet (Air Medal).

Upload a File



CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

My DD214.jpg

Date Dec 11, 2020

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Victorino M. Manzon

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

COMMISSION APPLYING FOR:	Veterans Commission
Name	Puneet Sandhu
Address Type	Business
Address	414 south Main Street
City	Milpitas
Postal/Zip Code	95035
Mobile Number	(510) 825-0445
E-Mail Address	Puneetsandhu@hotmail.com

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Present Employer	Milpitas Smild Design
Other Phone	(510) 825-0445
City	Milpitas
Postal / Zip code	95035

Occupation	Dentist
College, Professional, Vocational, or other schools attended	UCLA school of dentistry
Degree	Doctor of dental surgery

List community organizations to which you belong or have belonged (additional information may be attached).

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Branch of Military	USAF
Officer	Major

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):
Have several businesses in Milpitas so I am personally vested in the growth and progress of the city . I have a strong sense of community and a calling to serve my fellow veterans

Date Oct 07, 2020

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Puneet Sandhu

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Introduce Ordinance No. 65.150 Regarding Responsible Construction**
Category:	Leadership and Support Services
Meeting Date:	1/5/2021
Staff Contacts:	**Christopher J. Diaz, City Attorney 408-586-3040** **Steve McHarris, City Manager 408-586-3059**
Recommendation:	Following the reading of the title by the City Attorney, move to waive the first reading beyond the title and introduce Option 2 - Ordinance No. 65.150, adding Chapter 32 (Responsible Construction) to Title III of the Milpitas Municipal Code

Background:

At the August 4, 2020 City Council meeting, the City Council unanimously agreed to direct staff to return with a draft Responsible Construction Ordinance as requested by Mayor Rich Tran and Councilmember Anthony Phan. This item was last continued from the December 1, 2020 City Council meeting.

In general, the draft Responsible Construction Ordinance, attached as Attachment 1, would impose certain provisions requiring private developers receiving financial assistance from the City involved in construction, alteration, and/or demolition work within the City, valued in excess of $500,000, to file disclosure forms with the City confirming their contractors and subcontractors have no unpaid wage theft or other judgments or outstanding violations.

In further working with Councilmember Phan, staff has also prepared an alternative Responsible Construction Ordinance, attached as Option 2. Under this proposed version, applicants for certain private construction projects would be required to acknowledge up front the requirement to comply with the California Labor Code, and construction contractors would be required to certify that they complied with Labor Code provisions regarding pay transparency. If the City Council feels strongly about implementing a Responsible Construction Ordinance, the City Attorney's Office recommends that the City Council proceed with the alternative option as it is generally less burdensome on staff and City resources in order to implement and enforce.

Analysis:

Option 1

Under Option 1 that has previously been included in the City Council agenda packet, the proposed Responsible Construction Ordinance would impose on any "Covered Party," as defined in the Ordinance, to include any private developer or building permit holder receiving financial assistance from the City (with the exception of any owner working on their own residence), the requirement that it ensure that any contractor or subcontractor performing work in excess of $500,000 on a "Major Construction Project," as defined in the Ordinance, disclose:

- any wage theft violations in the five years prior;
- any citations or penalties imposed by the U.S. Department of Labor, the California Department of Industrial Relations, the California Labor Commissioner's Office, or the California Division of Occupational Safety and Health in the five years prior;

- any cause findings by the California Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission for the laws enforced by those agencies during the five years prior;
- any liability for failing to maintain worker's compensation insurance, or any fraudulent activity related to worker's compensation insurance, in the five years prior;
- any liability for retaliating or discriminating against a worker for making a complaint about a violation of laws enforced by the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Fair Employment and Housing, or the U.S. Equal Employment Opportunity Commission during the five years prior;
- any liability for failing to pay any payroll taxes during the five years prior;
- any liability for violating any laws relating to human trafficking during the five years prior;
- whether the contractor or subcontractor has been found by the Contractors State License Board to have performed covered work without a contractor's license or to have performed work without the appropriate license for the classification of work during the five years prior;
- whether any judgments, decisions, determinations, orders, or citations have been issued against the contractor or subcontractor by a court of law, an administrative agency authorized to enforce applicable federal, state and local labor standards laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the City of Milpitas minimum wage ordinance or prevailing wage requirements, an arbitrator, or an arbitration panel that a) require the payment of money by the contractor or subcontractor, b) have not been fully satisfied, and c) are no longer subject to appeal; and
- whether enforcement of any unsatisfied judgments, decisions, determinations, orders, or citations issued against the contractor or subcontractor have been stayed by court order or operation of law.

In addition to the disclosure requirements detailed above, a "Covered Party" and its contractors are also required to provide access to the project site, project records, and the workers to ensure compliance with the Ordinance.

In order to enforce the Ordinance, a fine of up to $1,000 would be imposed for each violation. The City could also enforce the Ordinance through the existing Administrative Citation provisions in the City's Municipal Code. Finally, the City has the right to require the Covered Party to re-pay any City financial assistance provided if they are found to have an unsatisfied judgment.

With respect to Option 1, it is important to note that staff is currently not trained in investigating potential complaints of non-compliance and the disclosure requirements outlined in the Ordinance, nor is staff time dedicated to handle potential complaints. It would require extensive resources to learn and understand the body of work related to the Ordinance. Therefore, prior to adoption of the Ordinance, staff had intended to contract with the City of San Jose for responding to complaints of non-compliance, which may require funding. The City of San Jose Office of Equality Assurance has over 20 years of experience with various construction-related wage compliance issues. However, at this time, San Jose has not adopted a similar ordinance nor does it have an anticipated date of adoption, so staff will need to explore other contractual options for enforcement. Staff has also not conducted robust outreach on this Ordinance. Thus, staff is recommending bringing back additional information related to enforcement program and costs and community outreach, prior to ordinance adoption.

Option 2

Option 2 is the new proposed Alternative Responsible Construction Ordinance, which is recommended by staff if the City Council wants to proceed with an ordinance. Option 2 would require construction contractors to certify that they have complied with State wage theft prevention laws prior to receiving a certificate or other permit allowing occupancy of new construction. The proposed Ordinance is based on an ordinance adopted by the City of Morgan Hill. Staff has consulted with the Morgan Hill City Attorney's Office regarding the implementation of their ordinance, and they have verified with their building official that there have been no issues of compliance to date. The Ordinance includes the following elements:

- As a condition of approval for any building permit required for a project (defined in the Ordinance as new construction of greater than 15,000 square feet that is not subject to prevailing wage requirements and/or does not have a valid Project Labor or Community Workforce Agreement), applicants must sign an acknowledgement that they are required to comply with the requirements of the Labor Code.
- Prior to issuance of a certificate of occupancy, or other permit to occupy new construction, project owners, contractors, and significant subcontractors must certify under penalty of perjury that they have complied with sections 2810.5 and 226(a) of the California Labor Code. These provisions require employers to provide advance notice of the employer's pay practices, and to provide employees with itemized pay statements showing compliance with state wage and hour laws.
- The City may pursue remedies against the owner or contractor in the event that there are violations of the Labor Code or one of the relevant parties is unable to certify compliance with the Labor Code, including requiring the owner or contractor to provide evidence of the existence of a labor payment and/or lien release bond to ensure that any wage claims and penalties can be fully paid.

The proposed Ordinance seeks to ensure that construction contractors doing business in Milpitas comply with the California Labor Code by making compliance with State wage theft prevention laws a condition of approval for any building permit, and requiring compliance certification prior to issuance of a certificate of occupancy. This alternative option is designed to apply more broadly than Option 1, but is also intended to be less staff intensive, particularly from an enforcement standpoint.

Policy Alternatives:

Alternative 1: The City Council could choose not to introduce the Ordinance.

Pros: The City will not need to develop an enforcement program and incur associated costs for enforcement.

Cons: If the City Council does not introduce the Ordinance, the Responsible Construction Ordinance provisions will not become law in Milpitas in the future.

Reason not recommended: The City Council directed that the Ordinance return at a future City Council meeting, and staff is bringing this Ordinance forward, along with options, per the City Council's request.

Alternative 2: Do not require additional information about enforcement and outreach efforts prior to adoption of Option 1 of the Ordinance.

Pros: The City will be able to move forward on this Ordinance in an expeditious manner.

Cons: The enforcement program and associated costs have not been determined. The City has also not engaged in stakeholder outreach.

Reason not recommended: Staff still needs to explore enforcement options, determine associated costs as well as conduct stakeholder outreach which may inform the Ordinance as currently written and prompt additional staff recommendations for effective enforcement of the Ordinance upon adoption.

Fiscal Impact:
Introduction and adoption of the Ordinance in itself would not lead to any financial impact; however, with respect to Option 1, enforcement of the Ordinance would lead to a financial impact on the City in terms of staff time or other costs if the City opts to delegate enforcement to a neighboring agency pursuant to a contractual arrangement. With respect to Option 2, the proposed Ordinance will require some additional staff time to review compliance with the certification requirements; however, under this alternative as proposed, the additional staff time required would likely be minimal.

California Environmental Quality Act:

The introduction and 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 project 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 a administrative activity of the government intended to ensure wage laws are followed in the City pursuant to CEQA Guideline 15378.

Recommendation:

Following the reading of the title by the City Attorney, move to waive the first reading beyond the title and introduce Option 2 - Ordinance No. 65.150 adding Chapter 32 (Responsible Construction) to Title III of the Milpitas Municipal Code.

Attachment:

1. Option 1 - Ordinance No. 65.150 for introduction
2. Option 2 - Alternative Ordinance No. 65.150 for introduction

REGULAR

NUMBER: 65.150

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTER 32 (RESPONSIBLE CONSTRUCTION) TO TITLE III OF THE MILPITAS MUNICIPAL CODE

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, 2021, upon motion by_____ 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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Milpitas may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, the City Council of the City of Milpitas desires to adopt certain provisions requiring certain types of private developers receiving financial assistance from the City and involved in construction, alteration, and/or demolition work within the City, valued in excess of $500,000, to file disclosure forms with the City confirming their contractors and subcontractors have no unpaid judgments or outstanding violations; and

WHEREAS, the City Council finds that such provisions shall serve the best interests of the citizens of Milpitas by requiring that any work being performed on certain private construction projects in the City be made by responsible construction contractors; and

WHEREAS, this Ordinance is intended to combat wage theft and protect vulnerable worker populations in the City by establishing safeguards for responsible construction practices.

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 ADDING A NEW CHAPTER 32 TO TITLE III

Title III of the Milpitas Municipal Code is hereby amended by adding a new Chapter 32, "Responsible Construction," to read as follows:

Chapter 32 - RESPONSIBLE CONSTRUCTION

III-32-1.00 - Title

This Chapter shall be known as the "Responsible Construction Ordinance."

III-32-2.00 - Authority

This Chapter is adopted pursuant to the powers vested in the City of Milpitas under the laws and Constitution of the State of California, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution.

III-32-3.00 - Definitions

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

(a) "Building permit holder" means a person or entity that has obtained a building permit from the City to undertake a major construction project that has been granted any Financial Assistance. A building permit holder does not include an owner self-performing work on the owner's residence.

(b) "City" means the City of Milpitas, California or any agency designated by the City to administer the terms of this Chapter.

(c) "Covered party" means a developer or building permit holder as defined in this Chapter.

(d) "Developer" means an entity or person who owns or controls a major construction project that has been granted any Financial Assistance. Developer does not include an owner undertaking work on the owner's residence.

(e) "Final judgment" means a judgment, decision, determination, order, or citation, for which there is no pending appeal and the time for filing an appeal has passed, that was issued by:

(1) a court of law, an administrative agency authorized to enforce applicable federal, state and local labor standards laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the City of Milpitas minimum wage ordinance, and prevailing wage requirements, or

(2) an arbitrator, or an arbitration panel.

(f) "Financial Assistance" means any financial incentive or investment provided by the City or a City-controlled entity or political subdivision to facilitate or support a major construction project, including:

(1) Taxes, fees, costs, rents, insurance or bond premiums, loans, interest rates, inclusionary housing obligations, inclusionary housing in-lieu fees, or other obligations that would normally be required, that are paid, reduced, charged at less than fair market value, waived, rebated, granted an exception to, or forgiven by the City, as well as any other City tax or fee break programs available to new developments or to a particular sub-category of developments, unless required by state law.

(2) The payment of money or the equivalent of money for the design, development, construction, financing or any other component related to development of the project, including, but not limited to, infrastructure costs, preconstruction costs, demolition costs, construction costs, financing costs, equipment costs, design costs, environmental review costs, and environmental mitigation costs; and

(3) Any loan or loan guarantee.

(g) "Major construction project" means a project that will involve construction, alteration, and/or demolition work in excess of $500,000 within the City.

III-32-4.00 - Bidding and Contracting Requirements

(a) A covered party shall require, in all solicitations or invitations for bids to perform work on a major construction project that has been granted or will be granted Financial Assistance, and prior to awarding any contract to perform work on a major construction project that has been granted or will be granted Financial Assistance, that every contractor and subcontractor performing work on the project in excess of $50,000 complete and return to the covered party the disclosure form required by this Chapter.

(b) A covered party shall disqualify a contractor or subcontractor from entering into a contract to perform work, and from performing such work for a covered party, if the required disclosure form has not been submitted, if the disclosure form is materially false or incomplete, or if the disclosure form reports that the contractor or subcontractor has an unsatisfied final judgment. Nothing in this Chapter shall preclude a covered party from disqualifying the contractor or subcontractor for additional reasons.

(c) A covered party shall file a copy of the completed disclosure form required by this Chapter with the City prior to the contractor or subcontractor performing work on the project.

(d) A contractor or subcontractor performing work for a covered party for which a disclosure form is required must complete the disclosure form prior to entering into a contract to perform the work.

(e) Upon notification from the City to a covered party that a contractor or subcontractor performing work for a covered party for which a disclosure form is required has not completed a disclosure form, or has submitted a

disclosure form that is incomplete, the covered party shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project until such time the contractor submits a complete disclosure form.

(f) Upon notification from the City to a covered party that a contractor or subcontractor performing work for a covered party for which a disclosure form is required has submitted a disclosure form that is materially false, or has submitted a disclosure form that reports an unsatisfied final judgment, the covered party shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project.

III-32-5.00 - Disclosure Form

(a) The disclosure form required by this Chapter shall be completed by each contractor and subcontractor, as specified in Section III-32-4.00(a), on a form provided by the City. The completed disclosure form shall be verified by a representative of the contractor or subcontractor under penalty of perjury.

(b) In the disclosure form, the contractor or subcontractor shall confirm the following facts regarding its past performance and work history and its current qualifications:

(1) Name, address, and telephone number

(2) Responsible managing officer

(3) Contractor state license number

(4) Name and location of the project

(5) Project owner or developer

(6) Party who retained the contractor or subcontractor to perform work on the project

(7) Approximate date the contractor or subcontractor is scheduled to commence work on the project

(8) Whether the contractor or subcontractor has been found liable by any court or administrative agency for failing to pay wages or benefits to an employee or for violating any wage and hour provisions of the California Labor Code or the Fair Labor Standards Act during the five years prior to completion of the disclosure form.

(9) Whether the contractor or subcontractor has been subject to any citations or penalties imposed by the U.S. Department of Labor, the California Department of Industrial Relations, the California Labor Commissioner's Office, or the California Division of Occupational Safety and Health during the five years prior to completion of the disclosure form.

(10) Whether the contractor or subcontractor has been subject to any cause findings by the California Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission for the laws enforced by those agencies during the five years prior to completion of the disclosure form.

(11) Whether the contractor or subcontractor has been found liable for failing to maintain worker's compensation insurance or for engaging in fraudulent activity related to worker's compensation insurance during the five years prior to completion of the disclosure form.

(12) Whether the contractor or subcontractor has been found liable by any court or administrative agency for retaliating or discriminating against a worker for making a complaint about a violation of laws enforced by the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Fair Employment and Housing, or the U.S. Equal

Employment Opportunity Commission during the five years prior to completion of the disclosure form.

(13) Whether the contractor or subcontractor has been found liable by any court or administrative agency for failing to pay any payroll taxes during the five years prior to completion of the disclosure form.

(14) Whether the contractor or subcontractor has been found liable, admitted guilt, or been found guilty by any court or administrative agency for violating any laws relating to human trafficking during the five years prior to completion of the disclosure form.

(15) Whether the contractor or subcontractor has been found by the Contractors State License Board to have performed covered work without a contractor's license or to have performed work without the appropriate license for the classification of work during the five years prior to completion of the disclosure form.

(16) Whether any judgments, decisions, determinations, orders, or citations, that a) require the payment of money by the contractor or subcontractor, b) have not been fully satisfied, and c) are no longer subject to appeal, have been issued against the contractor or subcontractor by:

(1) a court of law, an administrative agency authorized to enforce applicable federal, state and local labor standards laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the City of Milpitas minimum wage ordinance, and prevailing wage requirements, or

(2) an arbitrator, or an arbitration panel.

(17) Whether enforcement of any unsatisfied judgments, decisions, determinations, orders, or citations issued against the contractor or subcontractor have been stayed by court order or operation of law.

III-32-6.00 - Access Requirements

(a) A covered party shall provide investigators for the City with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

(b) A covered party shall require its contractors and subcontractors to provide investigators for the City with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

(c) A contractor or subcontractor performing work on a project subject to this Chapter shall provide investigators for the City with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

(d) The City may contract with a non-profit organization to conduct investigations on behalf of the City for purposes of this Chapter and such investigators shall be provided with jobsite access and the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

(e) Upon notification from the City to a covered party that a contractor or subcontractor refuses to provide the City with jobsite access and the right to inspect payroll records and interview workers that are required by this Chapter, the covered party shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project.

III-32-7.00 - Retaliation Prohibited

No covered party, or contractor or subcontractor performing work for a covered party, shall discriminate or retaliate against any person or entity for cooperating with an investigation under this Chapter or for making a complaint concerning an alleged violation of this Chapter.

III-32-8.00 - Guarantee Against Wage Theft

(a) A covered party shall be jointly responsible for satisfying any final judgment issued against a contractor or subcontractor on its project to the extent it awards wages, benefits, penalties, interest, and attorneys' fees to a worker on account of the worker's performance of work on the project.

(b) Upon notice from the City of an unsatisfied final judgment, the covered party shall provide the City, within 30 days of the City's notice, with proof that the final judgment has been satisfied. If the covered party fails to provide such proof, the City may, in addition to pursuing any other remedies, and after first consulting with the City Attorney's Office, suspend or revoke any building permit issued to the covered party, pursuant to, and in compliance with, Section II-1-8.05 of the Milpitas Municipal Code.

(c) A covered party whose building permit has been suspended or revoked due to failure to satisfy a final judgment may request an appeal pursuant to the provisions of Section 5 of Chapter 20 of Title I (Standard Procedures) of the Milpitas Municipal Code.

III-32-9.00 - Enforcement

(a) A covered party, or contractor or subcontractor performing work for a covered party, shall be subject to a civil fine payable to the City of up to $1,000 for each violation of this Chapter.

(b) Any person injured by a violation of this Chapter may bring a civil action against a covered party, or contractor or subcontractor performing work for a covered party, for damages in any court of competent jurisdiction.

(c) Any person who contends that a contractor or subcontractor is performing work for a covered party for which a disclosure form is required by this Chapter and that no such disclosure form was filed with the City may file a complaint with the City supported by evidence to show the violation. The City shall promptly provide a copy of the complaint to the contractor or subcontractor and to the covered party and request a response within seven days. Unless the contractor or subcontractor provides a completed disclosure form within seven days, or establishes to the satisfaction of the City that no violation occurred, the City shall give notice to the covered party that the contractor or subcontractor must be removed from the project within 48 hours and barred from performing further work on the project.

(d) Any person who contends that a contractor or subcontractor performing work for a covered party for which a disclosure form is required by this Chapter has provided a disclosure form that is materially false or incomplete may file a complaint with the City supported by evidence to show the violation. The City shall promptly provide a copy of the complaint to the contractor or subcontractor and to the covered party and request a response within seven days. Unless the contractor or subcontractor establishes to the satisfaction of the City that no violation occurred, the City shall give notice to the covered party that the contractor or subcontractor must be removed from the project within 48 hours and barred from performing further work on the project.

(f) If a covered party is found to have an unsatisfied final judgment, then in addition to any other penalties, the City may require the covered party to repay the full amount of the Financial Assistance provided for that project, including but not limited to the full amount of any tax and fees that were reduced, suspended, or waived as part of an economic incentive program. Any such repayments shall be deposited in the fund which was the source of the incentive, or in the case or tax and fee breaks, in the fund to which the tax or fee would have been directed.

SECTION 3. SEVERABILITY

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.

REGULAR

NUMBER: **65.150**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTER 32 (RESPONSIBLE CONSTRUCTION) TO TITLE III OF THE MILPITAS MUNICIPAL CODE**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ 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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Milpitas may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, the City Council of the City of Milpitas desires to adopt certain provisions to ensure that construction contractors doing business in Milpitas comply with the California Labor Code by making compliance a condition with State wage theft prevention laws a condition of approval for any building permit, and requiring compliance certification prior to issuance of a certificate of occupancy; and

WHEREAS, the City Council finds that such provisions shall serve the best interests of the citizens of Milpitas by requiring that any work being performed on certain private construction projects in the City be made by responsible construction contractors; and

WHEREAS, this Ordinance is intended to combat wage theft and protect vulnerable worker populations in the City by establishing safeguards for responsible construction practices.

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 ADDING A NEW CHAPTER 32 TO TITLE III

Title III of the Milpitas Municipal Code is hereby amended by adding a new Chapter 32, "Responsible Construction," to read as follows:

Chapter 32 - RESPONSIBLE CONSTRUCTION

III-32-1.00 - Title

This Chapter shall be known as the "Responsible Construction Ordinance."

III-32-2.00 - Authority

This Chapter is adopted pursuant to the powers vested in the City of Milpitas under the laws and Constitution of the State of California, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution.

III-32-3.00 - Definitions

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

(a) "City" means the City of Milpitas, California or any agency designated by the City to administer the terms of this Chapter.

(b) "Contractor" means the prime contractor on a construction project.

(c) "Owner" means the person or persons, firm, corporation, partnership or other legal entity exercising ownership of the Project.

(d) "Project" means new construction of greater than fifteen thousand square feet that is not subject to prevailing wage requirements and/or does not have a valid Project Labor or Community Workforce Agreement.

(e) "Project Construction Employees" means employees of the Contractor or subcontractor.

(f) "Representative" means a person authorized to legally bind the Owner and/or Contractor (for example; a corporate officer, general partner, or managing member of a limited liability company).

III-32-4.00 - Acknowledgement of Responsibility

As a condition of approval for any building permit required for a Project, an applicant shall sign an acknowledgement that the Owner, Contractor and any subcontractors are required to comply with all applicable provisions of the California Labor Code, including Labor Code section 2810.5.

III-32-5.00 - Pay Transparency Certification

Prior to issuance of a certificate of occupancy, or other permit to occupy new construction, for each Contractor or subcontractor whose portion of the work exceeds one hundred thousand dollars ($100,000) or one percent (1%) of the value of the construction cost of the Project, whichever is greater, the Owner shall provide to the City a Pay Transparency Certification ("Certification"), signed by a Representative of the Owner, the Contractor and any subcontractor under penalty of perjury under the laws of the State of California. The Certification required under this Section shall be in a form approved by the City and contain the following:

(a) A statement that Project Construction Employees of the Contractor and any subcontractors received written notice of the employer's pay practices as required by California Labor Code section 2810.5 and wage statements under Labor Code section 226(a); or

(b) Project Construction Employees of the Contractor and/or any subcontractors are covered by a valid collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage. (See Labor Code section 2810.5(c).)

III-32-6.00 – Compliance Determination

Prior to issuing a certificate of occupancy, or other permit allowing occupancy of the Project, the City shall make a finding of compliance with this Chapter. Such a finding shall be issued if:

(a) The City determines after a review of the Certification that the Owner, Contractor and any subcontractors have complied with the provisions of this Chapter; and

(b) The City has not received any information that the Labor Commissioner of the State of California has found violations of Labor Code sections 226 or 2810.5 regarding construction work performed on the Project.

III-32-7.00 - Bonds Required for Correction of Violation

If the City determines that the Owner, Contractor or any subcontractor has failed to comply with the provisions of this Chapter, or if the Labor Commissioner has found violations of Labor Code sections 226 or 2810.5, the City may issue a certificate of occupancy, only if the Owner or Contractor can provide evidence of the existence of a labor payment and/or lien release bond, in a form and amount sufficient to ensure that any wage claims and penalties can be fully paid.

III-32-8.00 - Private Right of Action

Nothing in this Chapter shall be interpreted to authorize a right of action against the City.

SECTION 3. SEVERABILITY

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:	**Introduce Ordinance No. 309 to make corrections, clarifications, updates and modifications to the Milpitas Municipal Code**
Category:	Leadership and Support Services
Meeting Date:	1/5/2021
Staff Contact:	Christopher Diaz, City Attorney, 408-586-3040 Ashwini Kantak, Assistant City Manager, 408-586-3053
Recommendation:	Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 309 amending various sections of Titles I, IV, V, VIII, X, and XI of the Milpitas Municipal Code to make corrections, clarifications, updates and modifications

Background:
The Milpitas Municipal Code (Muni Code) codifies the ordinances of the City of Milpitas. The Muni Code is organized by Titles, Chapters and Sections.

Title: A title is a broad category under which ordinances on a related subject are compiled. This code contains a total of 12 titles. For example, the first title is Title I, Administration, which contains ordinances about the code adoption process, definitions, general penalties, etc.

Chapter: Chapters deal with more specific subjects, and are often derived from one ordinance. All of the chapters on a related subject are grouped in one title. The chapters are numbered so that new chapters which should logically be placed near certain existing chapters can be added at a later time without renumbering existing material.

Section: Each section of the code contains substantive ordinance material.

The Muni Code was originally published in 1987 and in order to stay current, needs to be updated on a periodic basis. Staff is proposing several updates to the Muni Code that provide corrections and clarifications and make updates and modifications for purposes of general code clean-up.

Analysis:
Updates are proposed to the Muni Code in Titles I, IV, V, VIII, X, and XI, and are described below:

Proposed Changes related to Contracts

1. Title I, Chapter 2, Section 3, Subsection I-2-3.12 – Clarifies the process for evaluating consultant qualifications.This is intended to address an inadvertent error in the previously adopted Purchasing Ordinance.

2. Title I, Chapter 4, Section 3, Subsection I-4-3.01 – Aligns City Manager contract amendment authority with existing Purchasing Agent contract amendment authority. This change was made in the previously adopted Purchasing Ordinance so this change would be made for consistency.

Proposed Changes related to Presentation, Review and Settlement of Claims Against the City

1. Title I, Chapter 5, Subsection I-5-1.01 – Amends City Attorney settlement authority where the amount to be paid by the City does not exceed $50,000 if the City Manager also concurs with the settlement. The current settlement authority with the City Manager is $35,000 so this would be a potential increase consistent with other cities in the region.

2. Title I, Chapter 5, Subsection I-5-2.01 – Amends Risk Manager settlement authority for damages or claims where the amount to be paid does not exceed $20,000.00. The current settlement authority is $10,000 so this would be a potential increase.

3. Title IV, Chapter 1, Section 2, Subsections IV-1-2.02, IV-1-2.03, and IV-1-2.04 – Delegates authority to the Risk Manager to perform all functions of the City Council in the receipt, review, allowance, compromise or settlement of claims against the City; clarifies that the City Council or Risk Manager must act on a claim within 45 days after the claim has been presented. This change is being recommended as a best practice to ensure that claims can be responded to on a timely basis with the City's Risk Manager the best equipped to timely respond to the claims in consultation with the City Attorney's office and the City's risk insurance pool.

Proposed Changes related to Parking on City Property and City Parks

1. Title V, Chapter 100, Section 10, Subsection 10.15-2 – Clarifies authority of Police Department related to issuance of citations and removal of vehicles unlawfully parked on City property.

2. Title V, Chapter 100, Section 10, Subsection 10.15-4 – Prohibits parking between the hours of 10:00 p.m and 7:00 a.m on any day in the Milpitas Library Parking Garage.

3. Title V, Chapter 100, Section 12, Subections V-100-12.09-1, V-100-12.13, and V-100-12.16 – Amends and adds provisions related to parking in City parks to allow for overnight parking and limit parking during the day to 3 hour time periods, between the hours of 6:00 a.m. and 10:00 p.m. of any day.

Proposed Changes related to Property Maintenance

1. Title VIII, Chapter 2, Article XIII, Section 13.02, and Title X, Chapter 2, Sections 2 and 6 – Clarifies responsibility of maintenance for property owners with respect to parkway maintenance and maintenance of the house sewer.

Proposed Changes related to Floodplain Management Ordinance

1. Title XI, Chapter 15, Section XI-15-5.1 – In January 2021, the National Flood Insurance Program's (NFIP) Community Rating System (CRS) will begin implementing a new prerequisite for achieving Class 8: enforcement of a freeboard standard for residential buildings. This update clarifies the requirement that improvements within the floodplain maintain a 1 foot freeboard above the base flood water surface.

Fiscal Impact

None, other than staff time in preparing the Ordinance changes.

California Environmental Quality Act:

The introduction and 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.

Recommendation

Following the City Attorney's reading of the title of Ordinance No. 309, move to waive the first reading beyond the title and introduce Ordinance No. 309 amending various sections of Titles I, IV, V, VIII, X, and XI of the Milpitas Municipal Code to make corrections, clarifications, updates and modifications.

Attachment
Ordinance No. 309 (redlined for first reading)

PLEASE NOTE:

This copy of Ordinance No. 309 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 309

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING VARIOUS SECTIONS OF TITLES I, IV, V, VIII, X, AND XI OF THE MILPITAS MUNICIPAL CODE TO MAKE CORRECTIONS, CLARIFICATIONS, UPDATES AND MODIFICATIONS

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____ _____

Mary Lavelle, City Clerk Rich Tran, Mayor

APPROVED AS TO FORM:

_____

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas has a Municipal Code that details the laws and regulations of the City; and

WHEREAS, City staff has identified various sections of the Municipal Code requiring corrections, clarifications, updates and modifications and requests that the City Council take action to correct these issues through the adoption of this Ordinance.

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 I, CHAPTER 2, SECTION 3 "Procurement Authority - Methods and Procedures"

Title I (Administration), Chapter 2 (Purchasing), Section 3 (Procurement Authority - Methods and Procedures), Subsection I-2-3.12 (Contracting for Consultants) of the Milpitas Municipal Code is hereby amended to read as follows:

I-2-3.13 - Contracting for Consultants

3.13-1 Consultants are required for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill. Their numbers (in relation to a particular skill or expertise required) are comparatively limited. Where consultants are involved, the bidding process is not likely to result in a lower price to the City or eliminate unnecessary expense or delay. However, the request for proposals (RFP) process established in Section I-2-3.09, the request for qualifications (RFQ) process established in Section I-2-3.10, or a similar process based on evaluating consultant qualifications, is better suited.

3.13-2 The requesting department shall be empowered to engage a consultant (including, but not limited to, material testing services and construction inspection services) without the necessity of competitive procurement or notice thereof:

a. Without City Council approval if the consultant's total fee for materials and services under the contract by which the consultant is engaged does not exceed $100,000.00.
b. With City Council approval if the consultant's total fee for materials and services under the contract by which the consultant is engaged exceeds $100,000.00.

3.13-3 Architects, Engineers and Land Surveyors. In addition to the provisions of paragraph 3.13-1 and 3.13-2 of this section, the following requirements shall be applicable to the selection of architects, engineers and land surveyors.

(a) The requesting department or division head shall negotiate a contract with the firm that possesses the demonstrated competence and professional qualifications for the required architectural, engineering and land-surveying services.
(b) Should the requesting department or division head be unable to negotiate a satisfactory contract with the firm considered to be competent and qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The requesting department or division head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the requesting department or division head shall formally terminate negotiations. The requesting department or division head shall then undertake negotiations with the third most qualified firm.

(c) Should the requesting department or division head be unable to negotiate a satisfactory contract with any of the selected firms, the requesting department or division head shall select additional firms in order of their competence and qualifications and continue negotiation until an agreement is reached.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 4, SECTION 3 "Contract Amendment Authority"

Title I (Administration), Chapter 4 (Contract Authority), Section 3 (Contract Amendment Authority), Subsection I-4-3.01 of the Milpitas Municipal Code is hereby amended to read as follows:

I-4-3.01 -

The City Manager is authorized to enter into and execute for and on behalf of the City of Milpitas, without the prior approval of the City Council, any amendment or change order to a Contract that was executed pursuant to their respective authority under this Chapter within the following guidelines:

a. To extend the term of the Contract for a period not to exceed twelve (12) consecutive months from the last Council-approved expiration date;
b. To make minor revisions to the scope of services or schedule; or
c. To make clerical corrections.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 5 "Settlement Authority"

Title I (Administration), Chapter 5 (Settlement Authority), Section 1 (Settlement Authority of City Attorney) of the Milpitas Municipal Code is hereby amended to read as follows:

I-5-1.01 -

The City Attorney is authorized to compromise and settle claims and actions for damages against the City, and/or against its officers and employees for conduct within the course and scope of their employment with the City where:

a. The amount to be paid by the City does not exceed $10,000.00.
b. The amount to be paid by the City does not exceed $50,000.00 if the City Manager also concurs with the compromise or settlement.
c. The City Attorney is authorized to enter into agreements on behalf of the City and its officers and employees as necessary to effectuate any authorized compromise and settlement.
d. The City Attorney shall report annually to the City Council the claims or actions against the City settled for an amount greater than $10,000.00.

Title I (Administration), Chapter 5 (Settlement Authority), Section 2 (Settlement Authority of the Risk Manager) of the Milpitas Municipal Code is hereby amended to read as follows:

I-5-2.01 -

a. The Risk Manager is authorized to compromise and settle any claims against the City for damages or claims for other money owed to the City where the amount to be paid does not exceed $20,000.00, provided the Risk Manager deems the compromise and settlement to be in the City's best interest. For purposes of any compromise and settlement pursuant to this provision, the Risk Manager is authorized to enter into any agreement for or on behalf of the City necessary to effectuate the compromise and settlement. To the extent the full amount owing to the City on any claim is not collected due to a compromise and settlement pursuant to this provision, the uncollected amount shall be deemed written off as uncollectible.

b. The Risk Manager shall report annually to the City Council the claims or actions against the City settled pursuant to this Section I-5-2.01.

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE IV, CHAPTER 1, SECTION 2 "Care of Funds"

Title IV (Financial), Chapter 1 (General Provisions), Section 2 (Care of Funds), Subsection IV-1-2.02 (Demands or Claims Against the City) of the Milpitas Municipal Code is hereby amended to read as follows:

IV-1-2.02 - Demands or Claims Against the City

A. All demands or claims against the City for money, damages or refunds which are excepted by Section 905 of the Government Code and which are not governed by other statutes or ordinances expressly relating thereto shall:

(a) Be in writing;

(b) Contain the name and post office address of the claimant;

(c) Be verified by the person who claims to be entitled to be paid the money or damages or who has paid the money sought to be refunded or by his or her guardian, conservator, or the executor or administrator of his or her will or estate;

(d) Contain the date, description and amount of each item, or if the demand or claim is other than contractual, state the date, place and circumstance of the occurrence or transaction giving rise to the demand or claim and a general description of the indebtedness, obligation or injury so far as it may be known;

(e) State the total amount of the demand or claim, together with the basis for computation of the amount claimed;

(f) Be presented to the City not later than one year after the accrual of the cause of action

B. Pursuant to Government Code Section 935.4, the City Council delegates authority to the City's Risk Manager or his or her designee to perform all the functions of the City Council in the receipt, review, allowance, compromise or settlement of all claims against the City that fall under Division 3.6 of Title 1 of the Government Code or this Subsection IV-1-2.02, provided that no allowance, compromise or settlement shall exceed the Risk Manager's settlement authority as pursuant to Milpitas Municipal Code Section I-5-2.01.

Title IV (Financial), Chapter 1 (General Provisions), Section 2 (Care of Funds), Subsection IV-1-2.03 (Action by City Council) of the Milpitas Municipal Code is hereby amended to read as follows:

IV-1-2.03 - Time for Action by City

Pursuant to Government Code Section 912.4, the City Council or Risk Manager or his or her designee shall act on a claim within 45 days after the claim has been presented. By mutual agreement of the claimant and the City Council, or Risk Manager or his or her designee, such 45-day period may be extended by written agreement. If the claim is not acted on within 45 days, it shall be deemed to have been rejected on the forty-fifth day unless such time period has been extended, in which case it shall be denied on the last day of the period specified in the extension agreement.

Title IV (Financial), Chapter 1 (General Provisions), Section 2 (Care of Funds), Subsection IV-1-2.04 (Prerequisite to Suit) of the Milpitas Municipal Code is hereby amended to read as follows:

IV-1-2.04 - Prerequisite to Suit

No suit may be brought against the City on any cause of action for which a demand or claim must be filed until said written demand or claim has been presented as required by this Chapter to the City and has been acted upon by the City or has been deemed to have been rejected. Any action brought against the City on said demand or claim shall be subject

to the provisions of Sections 945.6 and 946 of the Government Code. Only the person who filed the claim may bring such a suit and if another person should do so, judgment shall not be rendered for the plaintiff.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE V, CHAPTER 100, SECTION 10 "Stopping, Standing and Parking"

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 10 (Stopping, Standing and Parking), Subsection 10.15-2 of the Milpitas Municipal Code, is hereby amended to read as follows:

10.15-2 When signs authorized by the provisions of this Subsection are in place, giving notice thereof, no person shall park or stand any vehicle contrary to the directions or provisions of such signs, and any vehicle parked in violation of such signs may be towed to a public storage garage at the expense of the owner of such vehicle; or the Police Department may, and it is granted authority to, issue a citation in the usual form and manner for any violation of the prohibition, limitation or restriction indicated by such signs or for any violation of the provisions of this Subsection.

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 10 (Stopping, Standing and Parking), Subsection 10.15-4 of the Milpitas Municipal Code, is hereby amended to read as follows:

10.15-4 The City Council finds and declares that the orderly, efficient conduct of the City's business requires that parking of vehicles on City property be prohibited, limited or restricted as hereafter provided:

(a) When signs are in place giving notice thereof, and except as authorized by permit as hereafter provided, it shall be unlawful to park a vehicle between the hours of 7:00 a.m. and 6:00 p.m. on any day (except Saturdays, Sundays and official City holidays) at the following locations and in excess of the following periods:

(1)Within the east wing of the City Hall parking lot (including the area in front of and east of the Community Center) in excess of four (4) hours in any one day (except as authorized by permit);

(2)Within the parking areas in front of the main entrance to City Hall in excess of three (3) hours in any one day (except as authorized by permit);

(3)In the parking stalls in front of the Finance Department and the Credit Union on the southerly side of City Hall in excess of thirty (30) minutes in any one day.

(b) Permits shall be issued by the City Manager or the Chief of Police. They may be limited as to date and permitted hours. They shall be prominently displayed on the dashboard of the vehicle or, if a sticker, affixed to the rear bumper. They will be issued to all City Councilpersons, to all City vehicles and to all City employees for use on the employee's private vehicle. They may be issued by the City Manager or Chief of Police on a sign-out basis for all persons having business to conduct at City Hall or the Community Center in excess of the allowable parking time.

(c) When signs are in place giving notice thereof, it shall be unlawful to park a vehicle between the hours of 10:00 p.m. and 7:00 a.m. on any day in the Milpitas Library Parking Garage.

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE V, CHAPTER 100, SECTION 12 "Stopping Standing, Parking, are Restricted or Prohibited on Certain Streets"

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 12 (Stopping Standing, Parking, are Restricted or Prohibited on Certain Streets) of the Milpitas Municipal Code, is hereby amended to read as follows:

Title V, Chapter 100, Section 12 - Stopping, Standing, Parking, are Restricted or Prohibited on Certain Streets and City Facilities

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 12 (Stopping Standing, Parking, are Restricted or Prohibited on Certain Streets), Subsection V-100-12.09-1 of the Milpitas Municipal Code is hereby amended to read as follows:

12.09-1 Pursuant to the authority contained in the California Vehicle Code, any vehicle parked or left standing in violation of the provisions of this Chapter upon any street, portion thereof, in any parking lots or designated areas adjacent to or at a City Park, may be removed therefrom and stored by order of any police officer, provided signs are in place giving notice of said removal. (See Section 22651 CVC)

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 12 (Stopping Standing, Parking, are Restricted or Prohibited on Certain Streets), Subsection V-100-12.13 (Parking Time Limited Adjacent to City Parks) of the Milpitas Municipal Code is hereby amended to read as follows:

V-100-12.13 - Parking Time Limited Adjacent to City Parks

When authorized signs are in place giving notice thereof, no person shall stop, stand or park any vehicle on any of the streets or portions thereof facing onto a City Park for a period of time in excess of three (3) hours between the hours of 6:00 a.m. and 10:00 p.m. of any day.

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 12 (Stopping Standing, Parking, are Restricted or Prohibited on Certain Streets) of the Milpitas Municipal Code is hereby amended to add a new Subsection V-100-12.16 to read as follows:

V-100-12.16 Parking Time Limited in City Parks

When authorized signs are in place giving notice thereof, no person shall stop, stand, or park any vehicle on any City Park or portions thereof for a period of time in excess of three (3) hours between the hours of 6:00 a.m. and 10:00 p.m. of any day.

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE VIII, CHAPTER 2, ARTICLE XIII, SECTION 13.02 "Maintenance by User"

Title VIII (Public Works), Chapter 2 (Milpitas Sanitary Code), Article XIII (Responsibility for Maintenance), Section 13.02 (Maintenance by User) of the Milpitas Municipal Code is hereby amended to read as follows:

Section 13.02 - Maintenance by User

The User owns the entire house sewer and shall be responsible for maintaining, repairing, replacing, and clearing all stoppages and maintaining flow in the house sewer, in accordance with the following provisions:

A. Stoppages or other maintenance and repairs required in the house sewer shall be the responsibility of the User. B. The User shall be responsible for clearing stoppages in the entire length of the house sewer.

The User shall keep the house sewer free from roots, grease deposits, and other solids which may impede the flow or obstruct the transmission of waste.

The User shall have a street cleanout located at the property line, between the house sewer and the house lateral. All cleanouts shall be securely capped with a proper cap at all times.

All joints of the side sewer shall be watertight and all side sewer pipe shall be sound to prevent exfiltration by waste or infiltration by ground water or storm water.

SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE X, CHAPTER 2, SECTION 2 "Definitions"

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions), Subsection X-2-2.12 of the Milpitas Municipal Code is hereby amended to read as follows:

X-2-2.12

"Parkway" shall mean that portion of a street other than a roadway or a sidewalk.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions), Subsection X-2-2.13 of the Milpitas Municipal Code is hereby amended to read as follows:

X-2-2.13

"Tree Pruning" shall refer to the removal of diseased, dead, dying, decayed, interfering or obstructing branches, or the training of young trees to control growth and enhance performance or function in the landscape, and by developing and preserving tree structure, health and stability. No more than 25% of the tree canopy should be removed within a growing season.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions), Subsection X-2-2.14 of the Milpitas Municipal Code is hereby amended to read as follows:

X-2-2.14

"Street Tree Planting" shall mean the planting of City street trees within the public right-of-way, in parks and in easements dedicated to tree planting. Street trees shall be planted in residential neighborhoods within tree planting easements in suitable vacant planting sites, which avoid conflicts with underground utilities and hardscapes.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions), Subsection X-2-2.15 of the Milpitas Municipal Code is hereby amended to read as follows:

X-2-2.15

"Tree Removal" means either 1) complete removal, such as cutting a tree to the ground; or 2) taking any action that would lead to the death of a tree or cause permanent damage that may compromise tree health and stability. Tree removal may include, but shall not be limited to, severe pruning or topping, girdling, poisoning, over watering, under watering, trenching, excavating, or altering the soil grade around the tree trunk.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions), Subsection X-2-2.16 of the Milpitas Municipal Code is hereby amended to read as follows:

X-2-2.16

"Tree Topping" is the removal of large branches to a stub, or smaller lateral not large enough to assume a terminal role. Tree topping is not an approved tree pruning practice for City street trees or protected trees, and is considered tree removal under this Chapter.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions) of the Milpitas Municipal Code is hereby amended to add a new Subsection X-2-2.17 to read as follows:

X-2-2.17

"Unapproved Street Tree" shall mean any tree planted within street right-of-way or easements or in proximity thereto, or on adjoining property, which does not qualify as an Approved Street Tree.

SECTION 10. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE X, CHAPTER 2, SECTION 6 "Other Plantings and Improvements"

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 6 (Other Plantings and Improvements), Subsection X-2-6.01 of the Milpitas Municipal Code is hereby amended to read as follows:

X-2-6.01 - Responsibility for Parkway Maintenance

Any person owning or occupying property adjoining the public right-of-way shall be responsible for planting, maintenance and care of any plantings other than Approved Street Trees in those areas between the curb and right-of-way or easement. The planting areas shall be maintained in a healthy condition free of dying, dead, diseased, decayed, discarded and/or overgrown vegetation. Maintenance of such areas shall include, but not limited to, weeding, pruning, spraying and watering.

X-6.01-1 Exception: The City shall maintain those planting areas within the street, which are developed and landscaped as a public improvement.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 6 (Other Plantings and Improvements), Subsection X-2-6.01-2 of the Milpitas Municipal Code is hereby amended to read as follows:

X-2-6.01-2 - Hardscape in Lieu of Other Plantings

Any person owning or occupying property adjoining the public right-of-way shall be responsible for any hardscape placed between the curb and right-of-way or easement, including, but not limited to, brick, pavers and cement and the maintenance and care of any hardscape including, but not limited to, weeding, grinding and replacement.

SECTION 11. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 15, SECTION XI-15-5.1 "Standards of Construction"

Title XI (Zoning, Planning and Annexation), Chapter 15 (Floodplain Management Regulations), Section XI-15-5.1 (Standards of Construction) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-15-5.1 - Standards of Construction

In all areas of special flood hazards the following standards are required:

(a) Anchoring.

(1) All new construction and substantial improvements, including manufactured homes, shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(2) All manufactured homes shall meet the anchoring standards of Section XI-15-5.4.

(b) Construction Materials and Methods. All new construction and substantial improvements, including manufactured homes, shall be constructed:

(1) With materials and utility equipment resistant to flood damage;

(2) Using methods and practices that minimize flood damage;

(3) With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and

(4) Within Zone AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

(c) Elevation and Floodproofing. (See Section XI-15-2, definitions for “basement,” “lowest floor,” “new construction,” “substantial damage” and "substantial improvement.")

(1) Residential construction, new or substantial improvement, including manufactured homes, shall have the lowest floor, including basement:

(i) In an AO Zone, elevated above the highest adjacent grade to a height exceeding the depth number specified in feet on the FIRM by at least one (1) foot, or elevated at least three (3) feet above the highest adjacent grade if no depth number is specified.

(ii) In an A Zone, elevated at least one (1) foot above the base flood elevation, as determined by the developer's engineer, and approved by the City Engineer.

(iii) In all other zones, be elevated at least one (1) foot above the base flood elevation.

This includes all non-flood resistant building material and all of the structure’s support equipment such as, but not limited to, electrical, heating, ventilation ductworks, plumbing, and air conditioning equipment and other service facilities that could be damaged if submerged under water.

Upon the completion of the structure, the elevation of the lowest floor including basement and the structure’s support equipment shall be certified by a registered professional engineer or surveyor, to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.

(2) Nonresidential construction shall either be elevated to conform with Section XI-15-5.1(c)(1) or together with attendant utility and sanitary facilities:

(i) Be floodproofed below the elevation recommended under subsection (c)(1) of this Section so that the structure is watertight with walls substantially impermeable to the passage of water;

(ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(iii) Be certified by a registered professional engineer or architect that the standards of this Section are satisfied. Such certification shall be provided to the Floodplain Administrator.

(3) All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must exceed the following minimum criteria:

(i) Be certified by a registered professional engineer or architect; or

(ii) Be certified to comply with a local flood-proofing standard approved by the Federal Insurance Administration, Federal Emergency Management Agency; or

(iii) Have a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

(4) Manufactured homes shall also meet the standards in Section XI-15-5.4.

SECTION 12. SEVERABILITY

The provisions of this Ordinance are severable, and the invalidity of any phrase, clause, provision or part shall not affect the

validity of the remainder.

SECTION 13. 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 36933 of the Government Code of the State of California.

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Consider Mayor's Appointments of City Councilmembers as Liaisons to City Commissions, City Subcommittees, and Outside Agency Boards and Committees**
Category:	Reports of Mayor and Councilmembers
Meeting Date:	1/5/2021
Staff Contact:	**Mayor Rich Tran, 408-586-3029**
Recommendation:	Consider Mayor's appointments of City Council members to liaisons of City Commissions, City Subcommittees, and outside agencies, boards and committees, and move to confirm those appointments.

Background:
Milpitas City Councilmembers serve as liaisons to eleven (11) City Commissions and eighteen (18) outside agency boards and committees. Councilmembers also serve on Council Subcommittees. Traditionally, after a local election, the Mayor will reassign City Councilmembers to both the City and outside agency bodies, with input on the Councilmembers' interests and availability. These assignments are placed on a Council agenda and approved at a City Council meeting.

Analysis:

Mayor Tran has provided the attached recommendations for Councilmember appointments to City subcommittees and commissions, outside agencies, boards, and committees.

Fiscal Impact:
None

California Environmental Quality Act:
This item is not subject to CEQA.

Recommendation(s):
Consider Mayor's appointments of City Council members to liaisons of City Commissions and outside agencies and committees, and boards, and move to confirm those appointments.

Attachment(s):
List of recommendations

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

Request No.	Topic	Submitted by:	A, F, or CM	Date requested or Rec'd Form	STATUS and/or DATE scheduled on City Council meeting agenda:
2021					
14	Schedule and host a "Milpitas Business Expo" in late 2021	Chua	A	12/15/2020	
13	Expedite process for Measure F Oversight Committee	Chua	A	12/15/2020	Staff explained planned process, appts. to be brought to Council in Feb. 2021
12	Report from staff on 2nd federal stimulus package - action plan on funds	Chua	A	12/15/2020	
11	Form "Beautify Milpitas" subcommitte - for a future Task Force or Commission	Chua	A	12/15/2020	
10	Amend ordinance/code to disallow develo-pers to pay in lieu fee (build 15% affd hsg.)	Chua	A	12/15/2020	1/5/2021
9	Plan to put utility fines into a fund to help small businesses in the City	Montano	A	12/15/2020	
8	Consider "Old Town" Main St. revitalization, funding, economic dev., improve area	Montano	A	12/15/2020	
7	Ordinance to ban vaping in the City	Montano	A	12/15/2020	
6	Place Econonomic Development Corporation (EDC) on agenda, for discussion	Montano	A	12/15/2020	
5	Form a Homelessness Task Force	Tran	A	12/15/2020	1/5/2021
4	Propose building height limits in area east of Milpitas Blvd.	Tran	A	12/15/2020	
3	Review City policy on speed bumps	Tran	A	12/15/2020	
2	Consider change in Commission structure, on term limits	Tran	A	12/15/2020	1/5/2021
1	Consider satellite consular offices (post Covid)	Montano	A	6/2/2020	

2020	**TOPICS SCHEDULED OR COMPLETED**

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

	Discussion of Minute Man as City's image, when City branding comes back	Phan	A	8/18/2020	discuss when report on "Branding" is on CC agenda in 2021
	Consider adding state certification NEC for electrical work done in the City (safety)	Dominguez	A	6/30/2020	unnecessary (staff is cert.)
	Establish a Day Worker Program	Montano	A	6/16/2020	Mayor & Vice Mayor brainstorm in future
	Form a Historical Commission	Montano	A	6/2/2020	already part of PRCRC. Can discuss with all Commissions on 01-05-2021
	Mayor shall recommend a Milpitas resident to serve on VTA Bike Committee	Dominguez	A	11/17/2020	12/15/20: resident Kristal Caidoy appointed to VTA BPAC
	Vote on County 2020-2025 Plan to end Homelessness	Dominguez	A	11/17/2020	12/1/20 adopted Resolution in support
	Revisit contract provisions of executive staff (CM + CA) best working environment	Phan	A	11/10/2020	discussed @Closed Session 11/17/2020
	Revisit CC Housing Subcommittee, consider dismantling ; bring items to Council	Dominguez	A	11/10/2020	12/01/20: Did not vote to eliminate Subcommittee
	Discuss a "safety first" or other event in lieu of National Night Out (per CAC)	Phan (Nuñez)	A	10/20/2020	Dec. 15: for 2021 @Public Safety month, new Police Chief
	Emergency request to cap rents on small businesses (tenants) in Milpitas	Dominguez	A	10/6/2020	On 12/01/20. Not supported
	Opportunity to share ideas for US census & on City "sponsored" events	Dominguez	A	9/1/2020	12/01: remove census topic, move events to CC retreat 2021
	Bring back update report & discuss status of playing fields for girls' softball in Milp.	Dominguez	A	10/20/2020	To City/Schools Subcomm. then CC. See C. Montano 10/14 Bobby Sox softball memo
	Consider naming "Milpitas Hills"	Dominguez	A	10/20/2020	to Econ. Dev. Commission first. Return later to City Council
	Discuss budget reductions in next FY with input from residents, employees	Nuñez	A	10/6/2020	on 10/20/2020, to 11/10, 11/17
	Discuss potential litigation - re: govts' action on Jamboree-Project Homekey	Tran	A	10/6/2020	multiple Closed Sessions - Oct. 2020
	Resolution on financial status of the City, steps to be taken	Nuñez	A	8/18/2020	Resolution adopted 9/01/2020
	Require implicit bias training for City Council, Commissioners & staff	Dominguez	A	6/16/2020	approved 8/18/2020
	Read "Code of Conduct" aloud prior to each City Council meeting	Montano	A	6/2/2020	approved 8/18/2020. City Attorney began this practice 9/01/20

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

	Discussion/staff report on Beautify Milpitas, graffiti abatement, resources	Montano	A	6/30/2020	8/18/20: Directed to staff develop program requiring min. staff resource & return to CC	
	Celebrate Mexican Independence Day annually on September 16	Montano	A	6/2/2020	approved on consent 8/18/2020	
	Consider change in term limits for Mayor + Councilmembers	Montano	A	6/16/2020		8/4/2020 Voted 3 -2 to pursue
	Discussion of campaign finance reform and/or Open Government Ordinance	Phan	A	6/30/2020		withdrawn @8/4/2020 CC meeting
	Community Workforce Agreement (PLA)	Nuñez	A	2/18/2020	[illegible] find CIP projects to apply & work w/labor org	
	Responsible Construction Ordinance	Phan	A	2/4/2020		8/4/2020: City Atty shall return with draft Ord.
	List of city charges/costs that could be waived for small businesses	Dominguez	A	6/16/2020		6/30/2020 info memo
	Emergency item for next agenda: extend tenant eviction protections	Dominguez	A	6/16/2020		withdrawn, covered by other govt
	Discussion on possible tax measures	Tran, Phan	A	4/21/2020		5/15/2020
	Support for Laura's Law	Phan	A	2/4/2020		5/19/2020
	(possible ban on vaping - no) Restrict smoking in multi-unit bldgs - yes	Montano	A	1/7/2020		Ordinance pending. Discussed 3/03/2020 Affirmed 6/02/2020
	Resolution in support of elimination of discrimination v. women	Dominguez	A	1/7/2020		5/19/20 Reso. adopted. 8/04/20 Ord. adopted
	Request for Dumpster Days	Tran	A	1/7/2020		5/12/2020 in FY 2020-21 budget
	Adopt Resolution similar to County's re: xenophobia, discrimination	Dominguez	A	4/21/2020		5/5/2020
	Support community distribution of masks	Dominguez	A	4/7/2020		4/21/2020
	Proclamation and support for face coverings	Montano	A	4/7/2020		4/21/2020. CC directed City Manager to issue regs
	Establish Milpitas coronavirus testing site	Phan	A	4/7/2020		done
	Consider Community Museum and Park on Main St.	Nuñez, Phan	F	8/20/2019	to Rules 8/23/2019	3/24 and 6/02/2020. Pending
	Discuss having 4th of July parade	Nuñez	A	2/18/2020		not under discussion

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	Parade for MHS Trojans Football	Tran, City Manager	A	1/21/2020		1/28/2020
	Report on speed cameras like Fremont (radar displays) - no enforcement	Phan	A	1/7/2020		1/28/2020, 3/24/2020, 4/14/2020
	Street/traffic calming update	Nuñez	A	1/7/2020		3/3/2020
	Report on parking in The Pines	Nuñez	A	1/7/2020		2/18/2020
	Info. on new SB 50 (housing, transit bill)	Phan	A	1/7/2020		by memo to City Council

A: @Announcements
F: on a Form
CM: to/from City Manager

MILPITA CITY COUNCIL
AGENDA PREVIEW LIST

JANUARY 19, 2021

CONSENT CALENDAR

1) Receive City Council calendar for January and February 2021 (City Clerk)
2) Approve City Council meeting minutes of January 5, 2021 (Dep. City Clerk)
3) 2nd reading/adopt Ordinance No. 309 municipal code updates (Ashwini Kantak, Chris Diaz)
4) 2nd reading/adopt Ordinance No. 65.150 on responsible construction (Chris Diaz)
5) Adopt a Resolution approving purchase of Two Skeeter Type 5 Fire Engines (Rick Frawley)
6) Adopt a Resolution concerning Alternate Retirement Plan System – PARS (Jeannine Seher)
7) Award and Approve New Agreement for Citywide Banking Services (Walter Rossmann)
8) Approve Annual Flag Raising Schedule (Renee Lorentzen)
9) Approve Amendment No. 2 to the Agreement with West Yost Associates for Design Services for Main Lift Emissions Control Facility CIP No. 6130 (Elaine Marshall, Tony Ndah)

COMMUNITY DEVELOPMENT

10) Milpitas Metro Plan update: land use and density (Ned Thomas)

REPORT

11) Review list of Future Agenda Items Requested by City Councilmembers (Mayor & City Councilmembers)

PREVIEW NEXT AGENDA

12) Preview list of items for February 2, 2021 (City Clerk)