MILPITAS CITY COUNCIL AGENDA

TUESDAY, APRIL 7, 2015

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

5:30 P.M. (STUDY SESSION) ● 7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

I. CALL TO ORDER by the Mayor (5:30 p.m.)

II. BUDGET STUDY SESSION

III. PLEDGE OF ALLEGIANCE (7:00 p.m.)

IV. INVOCATION (Councilmember Barbadillo)

V. APPROVAL OF COUNCIL MEETING MINUTES – March 17, 2015

VI. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – April 2015

VII. PRESENTATION

• Commend Alan Pham for 2nd annual Milpitas High School Inter-School Science Fair

VIII. PUBLIC FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. However, the Council may instruct the City Manager to place the item on a future meeting agenda.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

XI. APPROVAL OF AGENDA

XII. CONSENT CALENDAR (Items with asterisks*)

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 member of the City Council, 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. If removed, this item will be discussed in the order in which it appears on the agenda.

XIII. PUBLIC HEARING

1. **Conduct a Public Hearing and Introduce Ordinance No. 38.821 relating to Public Art Requirements for Private Development Projects (Staff Contact: Adam Petersen, 408-586-3274)**

XIV. UNFINISHED BUSINESS

2. Receive Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)

XV. REPORTS OF OFFICERS

*** 3. Consider Mayor's Recommendation for Appointment to Milpitas Commission (Contact: Mayor Esteves, 408-586-3029)**

4. Receive Presentation on an Overview of the California Public Employees Retirement System (CalPERS) (Staff Contact: Carmen Valdez, 408-586-3086)

XVI. NEW BUSINESS

5. Receive a Report and Demonstration on City Web Site Redesign (Staff Contact: Mike Luu, 408-586-2706)

6. Receive Solid Waste Program Status Report (Staff Contact: Steve Machida, 408-586-3355)

*** 7. Consider Request from Our Lady of Guadalupe Club to Waive Fee for Rental of Milpitas Community Center for Mother's Day Event on Saturday, May 9, 2015 (Staff Contact: Mary Lavelle, 408-586-3001)**

XVII. ORDINANCES

8. Adopt a Resolution of Intention and Introduce Ordinance No. 101.23 Amending the City's Contract with the Board of Administration of the California Public Employees' Retirement System (Staff Contact: Carmen Valdez, 408-586-3086)

*** 9. Waive the Second Reading and Adopt Ordinance No. 38.820 Prohibiting All New Residential Uses in the Town Center Zoning District (Staff Contact: Adam Petersen, 408-586-3274)**

XVIII. RESOLUTIONS

***10. Adopt a Resolution Requesting and Making Certain Findings Relating to the Allocation of Transportation Development Act (TDA), Article 3 Funds for the 2016 Street Resurfacing Project (Staff Contact: Steve Chan, 408-586-3324)**

***11. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Pinewood Park Improvements, Projects No. 3412, 5095, 5096, and 7116, and Granting Authorization to the Director of Engineering to Issue the Notice of Final Acceptance after the One-Year Warranty Period and to Release the Performance Bond (Staff Contact: Steve Erickson, 408-586-3301)**

***12. Adopt a Resolution Awarding a Contract to PCD for Community Center Auditorium Audio Visual Systems Upgrade, Project No. 3406, and Authorize the Director of Engineering to Negotiate and Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

***13. Adopt a Resolution to Waive Minor Bid Irregularity and Award a Contract to Ghilotti Construction Company, Inc. for the Main Street Pavement Reconstruction, Project No. 4277, and Authorize Director of Engineering to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

***14. Adopt a Resolution Approving a Contract with Central Medical Laboratory, Inc. for Police Drug and Alcohol Testing for the Annual Not-to-Exceed Amount of $19,500 and Authorizing the City Manager to Execute up to Four Annual Renewals (Staff Contact: Chris Schroeder, 408-586-3161)**

***15. Adopt a Resolution Making Findings and Determination of Public Nuisance Regarding Newby Island Resource and Recovery Park Landfill Operation (Staff Contact: Michael Ogaz, 408-586-3040)**

XIX. AGREEMENTS

***16. Approve Amendment No. 1 to the Agreement with Ted S. Farr Increasing Compensation by $15,000 to Assist with Implementation of the Santa Clara County Comprehensive EMS Patient Care Data System and Appropriate Funds to the Fire Department Operating Budget (Staff Contact: Rick Frawley, 408-586-2824)**

***17. Approve an Agreement with Maze & Associates Accountancy Corporation for Professional Auditing Services for a Five Year Period Not to Exceed $441,770 (Staff Contact: Emma Karlen, 408-586-3145)**

***18. Approve a Consultant Agreement with Modern Day Marketing, Inc. doing business as GreatLike Media for Development and Placement of an Online Community Awareness Campaign for an Amount Not to Exceed $25,000 (Staff Contact: Leslie Stobbe, 408-586-3352)**

***19. Approve Agreements with the County of Santa Clara for Collection of AB939 Implementation Fees and Administration of the Countywide Household Hazardous Waste Collection Program (Staff Contact: Steven Machida, 408-586-3355)**

***20. Approve Amendment No. 1 to the Consultant Services Agreement with RMC Water and Environment, Inc. for Utility Engineering Support (Staff Contact: Steven Machida, 408-586-3355)**

***21. Approve Agreements with Harris & Associates, Inc. and CSG Consultants, Inc. for Engineering Support Services for the Land Development Engineering Division (Staff Contact: Steven Machida, 408-586-3355)**

***22. Approve a New Capital Improvement Program Project for the McCandless Park, a Budget Appropriation and a Consultant Agreement with Environmental Foresight, Inc. for Outreach and Design Services for McCandless Park, Project No. 5102 (Staff Contact: Steve McHarris, 408-586-3273)**

XX. DEMAND

***23. Approve Payment to Jensen School of Performing Arts for Recreation Classes Per Terms of Existing Agreement (Staff Contact: Dale Flunoy, 408-586-3228)**

XXI. ADJOURNMENT

NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 21, 2015

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 agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the 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: mogaz@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 the City website.

All City Council agendas and related materials can be viewed online here: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Current vacancies on:
Community Advisory Commission
Sister Cities 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, 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. For hearing assistance, headsets are available in the City Council Chambers for all meetings.

XIII. PUBLIC HEARING

1. Conduct a Public Hearing and Introduce Ordinance No. 38.821 Relating to Public Art Requirements for Private Development Projects (Staff Contact: Adam Petersen, 408-586-3274)

Background: On February 18, 2014, Council directed staff to research public art in private development projects with an option for a new public art in lieu contribution. That direction also included returning to City Council with a report and analysis, and possibly an ordinance regarding a public art in private development projects program. Consistent with that direction, staff is bringing this report and a proposed Ordinance for Council consideration.

On March 11, 2015, the Planning Commission reviewed the proposed ordinance and recommended that the City Council adopt the ordinance based on a 6 to 1 vote.

To enhance the quality of life for residents in the City of Milpitas, the City is considering amending the Zoning Code to include provisions to incorporate public art requirements for private development projects. Incorporating artwork throughout the City would achieve the following public benefits:

- Distinguish Milpitas as a place to live, play, work, and visit;
- Further enhance the aesthetic environment;
- Strengthen cultural awareness, creativity, and innovative thinking;
- Integrate art professionals into the design and planning process.

Sample Ordinances
Staff investigated art ordinances in other jurisdictions to understand how agencies were incorporating public art in private development projects. Of the cities surveyed, the majority of jurisdictions required projects that were either above a certain square footage or above a certain valuation to contribute to public art. This contribution was either in the form of installing art on the project site or contributing to a public art fund that the City used for public art projects.

Brea Example
Vice Mayor Montano requested that staff evaluate the City of Brea Art in Public Places Plan (APPP). The Brea APPP requires developers to select and install permanent outdoor sculptures at their project sites. Projects with a valuation of $1.5 million to $3.9 million have the option of contributing sculptures or contributing in-lieu funds. Projects with a building valuation of more than $4.0 million must install sculptures onsite. Exemptions are provided for private residences of four or fewer dwelling units, places of worship, and public facilities. Developers are required to submit a sculpture application, which is reviewed and approved by the Art in Public Places Advisory Committee during the development review process.

The table below summarizes the other California jurisdiction staff reviewed:

City	Requirement	Value Contributed to Art	On-Site Art	In-Lieu Fee
Brea	$1.5 million - $3.9 million building valuation	1% building permit valuation	Sculpture incorporated into project or payment required	
	$4.0 million or more	1% building permit valuation	Select / purchase / install	
San Jose	Not Required Encouraged from Private Developers	1% of total estimated project costs	Select / purchase / install	

		0.6% of total estimated project costs		Payment Required
Oakland	Nonresidential – subject to design review and 2,000 sq ft or more	1% of permit valuation	Construct on-site or payment required to in-lieu fund	
	Residential – 20 units or more	0.5% of permit valuation		
Walnut Creek	25,000 sq ft or larger anywhere in city	1% building permit valuation		Payment Required
	15,000 sq ft – 24,999 sq ft in Core Area	0.5% building permit valuation		Payment Required
		Assessment greater than $25,000	Construct on project site or contribute to in-lieu fund	
Pasadena	$500,000	1% building permit valuation		
Fremont	Less than 100,000 sq ft	Fee determined by City Council – per sq ft		Payment Required
	More than 100,000 sq ft	Fee determined by City Council – per sq ft	50% of fee for art on site	50% into fund
Emeryville	Private Nonresidential - $300,000 building development costs	1% building permit valuation	Construct on project site or contribute to in-lieu fund	
	Private Residential – 20 or more units	0.5% building permit valuation	Construct on project site or contribute to in-lieu fund	

Proposed Amendments
The proposed Zoning Ordinance amendment would create a new Section 14 in the Zoning Code.

An overview of the proposed Ordinance is provided below:

1. The public art requirement shall apply to private development projects that exceed the following thresholds:

    a. Nonresidential development projects with 2,000 square feet or more of new floor area.
    b. Residential development projects containing 20 or more units.

2. The amount of the public art requirement is as follows:

    a. Nonresidential projects: One percent (1%) of the building development costs; and
    b. Residential projects: One percent (1%) of the building development costs.

3. The Developer has the option of:

    a. Installing publicly accessible art on the development site; or
    b. Making an in-lieu contribution to the City's Public Art Fund for acquisition and placement of public art throughout the City.

4. The requirements, although encouraged for all development in the City of Milpitas, will not apply to an affordable housing development if the developer demonstrates to the satisfaction

of the City that the requirements would cause the development project not to be economically feasible.

The proposed Ordinance is modeled on the successful ordinances in the cities of Oakland and Emeryville. It provides the Developer with the option of commissioning public art on the site of development or making an in-lieu contribution to the City's Public Art Fund. Deposits to the Public Art Fund may be used for acquisition and placement of public art throughout the City, reviewed by the City's Art Commission staff with recommendations to the City Council. The fund can also be used for maintaining public artwork and administrative cost to administer the public art program.

The proposed Ordinance will not apply to (a) building/construction related permits already issued and not yet expired; or (b) to zoning entitlements approved by the City and not yet expired; or (c) to zoning applications deemed complete by the City as of the date of final adoption of the Ordinance.

Compliance with the provisions of the proposed Ordinance will be required by the developer at Building Permit application, as follows: (a) payment of the full amount of the Public Art in-lieu contribution, or (b) submittal of contractual agreement to commission or purchase and install approved artwork on the development site. In the case of installation of public art on the development site, proposed artwork will be reviewed and approved by the Milpitas Arts Commission and the developer will maintain artwork in proper condition on an ongoing basis.

The proposed Ordinance is an aesthetic requirement for new private development within the City of Milpitas. The proposed art, including the in-lieu fee contribution, is not a development impact fee because it does not defray an impact created by new development, and therefore a nexus study is not required.

The following table provides examples of the in-lieu contributions the City would receive from different types of development projects:

Project	**Project Type**	**Building Valuation**	**1 Percent**
Apex	Multi-Family Apartment	$55,072,947	$550,729.47
Harmony	Multi-Family Condo	$90,082,996	$900,829.96
Sundrop	Single Family	$4,556,250	$45,562.50
District 1	Mixed-Use	$134,675,043	$1,346,750
1400 S. Park Victoria	Commercial	$400,000	$4,000
Total			$2,847,871.93

The proposed Ordinance will result in an enhanced public art program and more public artwork throughout the City of Milpitas, improving and enhancing the overall aesthetic environment. Public art enhances civic pride and helps define the City’s image to the public and visitors alike. This contributes to a sense of identity and place. It makes the City of Milpitas livable and more visually stimulating, which creates a benefit to the public and enhances the quality of life.

Alternatives: City Council may consider the following alternatives:

a) Adopt the Ordinance as proposed; or
b) Deny the amendment; or
c) Amend the proposed Ordinance.

Conclusion: Based on the analysis described above, adoption of the proposed Ordinance will require or provide for the installation of public artwork on new development project sites. This requirement is triggered if a nonresidential project adds more than 2,000 square feet of building space or if a residential project exceeds 20 units. Both types of development proposals are required to contribute one percent (1%) to an in-lieu fund or have artwork placed onsite. This will cause public art to be dispersed and created throughout the City of Milpitas enhancing the visual environment and quality of life for visitors and residents.

Fiscal Impact: The proposed ordinance will generate revenue for the City's Art In-Lieu Fund. This creates a positive fiscal impact that improves the aesthetic environment for the City.

California Environmental Quality Act: The project is exempt from CEQA pursuant to CEQA Guidelines Sections 15060(c)(2), 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

Attachments (documents in agenda packet):

A. Draft Ordinance No. 38.821
B. Planning Commission Agenda Report 3/11/2015
C. Planning Commission Meeting Minutes 3/11/2015
D. Adopted Planning Commission Resolution 15-013

Recommendations:

1. Open the public hearing to receive comments.
2. Move to close the public hearing following any comments.
3. Following the City Attorney reading aloud the title of Ordinance No. 38.821, move to waive the first reading of the ordinance beyond the title.
4. Move to introduce Ordinance No. 38.821 to amend the City of Milpitas Zoning Code to include provisions relating to public art in private development projects.

XIV. UNFINISHED BUSINESS

2. Receive Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)

Background: From February 9 through March 20, 2015, the Bay Area Air Quality Management District (BAAQMD) forwarded 448 odor complaints originating in Milpitas. 222 complaints identified a garbage odor, 20 complaints identified a sewage odor, 203 complaints did not identify an odor source, and three complaints identified a mixed odor source. As of the last Council update, the City's odor reporting website has received 122 reported complaints.

Recommendation: Receive the current update of the odor control report.

XV. REPORTS OF OFFICERS

*** 3. Consider Mayor's Recommendation for Appointment to Milpitas Commission (Contact: Mayor Esteves, 408-586-3029)**

Recommendation: Mayor Esteves recommends the appointment of Michael Lee (copy of application in agenda packet) to the Community Advisory Commission as Alternate No. 3 to a term that will expire in January of 2016.

4. Receive Presentation on an Overview of the California Public Employees Retirement System (CalPERS) (Staff Contact: Carmen Valdez, 408-586-3086)

Background: At the request of Councilmember Grilli, Mr. Ron Lind, Milpitas resident and CalPERS Board Member, will provide a presentation to the City Council on the funding status of the state retirement agency and how it relates to the City of Milpitas in CalPERS.

Recommendation: Receive a presentation by Ron Lind at the City Council meeting regarding CalPERS.

XVI. NEW BUSINESS

5. Receive a Report and Demonstration on City Web Site Redesign (Staff Contact: Mike Luu, 408-586-2706)

Background: For the past several months, Information Services staff has been working on a project to redesign the City's web site. The current design is over five years old. With the growing demand and viewing from mobile devices, the new redesign will respond and adapt to the new requirements. The goal of the redesign is to create a site that is cleaner, and adjusts to integrate with social media. Staff demonstrated the new design to the Telecommunications Commission on March 16, 2015. The new design was unanimously approved by the Telecommunications Commission. Staff will make a brief presentation to demonstrate the new web site. Some of the new features will be:

- Easily translates pages to 100 different languages
- Responsive (mobile-friendly) – Adapts and adjusts to mobile devices
- Content managed
- Modern design
- Consolidated

Alternative: The alternative is to keep the current website design.

Recommendation: Receive report from staff and direct staff to continue working on the City website update and redesign.

6. Receive Solid Waste Program Status Report (Staff Contact: Steve Machida, 408 586-3355)

Background: The City of Milpitas entered into a trash and recyclables hauling contract and a disposal contract with Browning Ferris Industries (BFI) in 1986, and entered into a residential yard waste hauling contract with BFI in 1996. Republic Services is the successor corporation to BFI and currently provides these services. All contracts will expire on September 5, 2017. It is in the best interest of the City to pursue a competitive bid and immediately commence with the process for a new contact. A Request for Proposals (RFP) process will provide for a competitive procedure ensuring the best value and service to the community.

The City has retained the services of HF&H Consultants, LLC to assist in the procurement of a solid waste services vendor. The process includes identifying proposed levels of service, ability to add services to keep in compliance with changing regulations, establishing criteria for evaluation, issue the request for proposals, proposal evaluation, award, community outreach, and implementation phase. The entire process is estimated to take 30 months. A schedule is included in the Council packet.

The next steps include presentation of a proposed Request for Proposals (RFP) process Integrity Policy and a Council Workshop. The proposed Policy, tentatively scheduled for the April 21 Council meeting, is necessary to insure that all vendors have the same information when preparing their bids. The Council workshop, tentatively scheduled for early May, provides Council with the opportunity to establish service goals, contract structure, key business points, and policies.

Alternative: An alternative is to negotiate an extension of the current contract with Republic Services. The current contract is sole source and consists of piece-meal language to accommodate new requirements and programs over the 31-year contact duration.

California Environmental Quality Act: Staff will determine whether review under the California Environmental Quality Act is necessary.

Fiscal Impact: None. The current consultant agreement includes sufficient funding for RFP preparation. Additional funding will be needed for subsequent efforts.

Recommendation: Receive a status report from the Director of Engineering on the City's solid waste program. Direct staff to proceed with the Request for Proposals process for competitive bids.

*** 7. Consider Request from Our Lady of Guadalupe Club to Waive Fee for Rental of Milpitas Community Center for Mother's Day Event on Saturday, May 9, 2015 (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: The City Clerk's office received a "Donation or Fee Waiver/Reduction Request Application Form" on March 12, 2015 from Milpitas resident Ruben Esguerra of Our Lady of Guadalupe Club, affiliated with St. John the Baptist Catholic Church, to waive the fee for rental of the Milpitas Community Center's Auditorium on Saturday, May 9, 2015 for a Mother's Day Event. An IRS letter of non-profit status for the Catholic Diocese of San Jose was submitted with the request.

Fiscal Impact: $20,000 was approved and included in the FY 2014-15 City budget for City Council's Unallocated Community Promotions. If the current donation request is approved, then $14,990.25 would be the remaining balance.

Recommendation: Consider the request from Our Lady of Guadalupe Club and move to approve fee waiver of $800.00 for the Mother's Day Event on Saturday, May 9, 2015.

XVII. ORDINANCES

8. Adopt a Resolution of Intention and Introduce Ordinance No. 101.23 Amending the City's Contract with the Board of Administration of the California Public Employees' Retirement System (Staff Contact: Carmen Valdez, 408-586-3086)

Background: As a result of contract negotiations between the City of Milpitas and the Milpitas International Association of Fire Fighters Local 1699 (IAFF) finalizing the Memorandum of Understanding (MOU) for the period of December 3, 2014 through December 31, 2016, both parties agreed that the City would amend its current contract with the Public Employees Retirement System (PERS) to provide Section 20516 (Employees Sharing Additional Cost) of 3% for local fire members in the International Association of Firefighters Local Union 1699.

Government Code Section 7507 requires that the all future costs or benefits changes be made public at least two weeks prior to the adoption of the final Ordinance. The classic local fire members' contribution rate will now be 12% of reportable earnings and any new local fire members' contribution rate will be 14.25% of reportable earnings. Any changes in the employee

or employer contribution rate will be effective as of the effective date of the contract amendment. PERS contract amendment procedures require an adoption of a Resolution of Intention to amend the contract and an adoption of an amending Ordinance.

Fiscal Impact: None.

Recommendations:

1. Adopt a Resolution of Intention to approve a contract amendment with the Public Employees Retirement System to provide Section 20516 (Employees Sharing Additional Cost) of 3% for local fire members in IAFF.
2. Following a reading the ordinance title by the City Attorney, move to waive the first reading beyond the title of Ordinance No. 101.23.
3. Introduce Ordinance No. 101.23, authorizing an amendment to the contract between the City Council of the City of Milpitas and the Board of Administration of the California Public Employees' Retirement System.

*** 9. Waive the Second Reading and Adopt Ordinance No. 38.820 Prohibiting All New Residential Uses in the Town Center Zoning District (Staff Contact: Adam Petersen, 408-586-3274)**

Background: On March 17, 2015, the City Council introduced Ordinance 38.820 to amend the City's Zoning Ordinance to prohibit all new residential uses from the Town Center Zoning District. Ordinance No. 38.820 is now ready for a second reading and adoption.

Recommendation: Waive the second reading and adopt Ordinance No. 38.820 amending the Town Center Zone prohibiting all new residential uses while allowing existing and previously approved residential uses to continue.

XVIII. RESOLUTIONS

***10. Adopt a Resolution Requesting and Making Certain Findings Relating to the Allocation of Transportation Development Act (TDA), Article 3 Funds for the 2016 Street Resurfacing Project (Staff Contact: Steve Chan, 408-586-3324)**

Background: The City of Milpitas receives guaranteed funding from the Transportation Development Act (TDA) Article 3 fund each year for pedestrian and bicycle improvement projects. The guaranteed funding is based on population and the FY 2015-16 funding for Milpitas is $51,634.

The City of Milpitas will submit a grant proposal to the Santa Clara Valley Transportation Authority for submission to Metropolitan Transportation Commission for release of this funding for the 2016 Street Resurfacing Project. The project will include the installation of Americans with Disability Act-compliant pedestrian ramps. Locations of improvements will be determined later, during the design phase. Construction is scheduled for the Summer/Fall of 2015.

Alternative: Denial of the request will result in the forfeit of the TDA Article 3 funds for 2016 Street Resurfacing Project.

California Environmental Quality Act: The project is categorical exempt under CEQA Article 19 Section 15301 for maintenance of existing public streets

Fiscal Impact: None**.** The City will receive guaranteed funding of $51,634 to use towards the 2016 Street Resurfacing Project.

Recommendation: Adopt a resolution requesting allocation and making certain findings relating to the Transportation Development Act, Article 3 Funds for the 2016 Street Resurfacing Project.

***11. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Pinewood Park Improvements, Projects No. 3412, 5095, 5096, and 7116, and Granting Authorization to the Director of Engineering to Issue the Notice of Final Acceptance after the One-Year Warranty Period and to Release the Performance Bond (Staff Contact: Steve Erickson, 408-586-3301)**

Background: City Council awarded the Pinewood Park Improvements, Projects No. 3412, No. 5095, No. 5096 and No. 7116 to Suarez & Munoz Construction, Inc. on March 18, 2014. The project provided various improvements at Pinewood Park, including the installation of group picnic areas, repair and replacement of play lot and structures, replacement of the tennis court backstop wall, rehabilitation of irrigation, lighting, and landscaping. The replacement of the tennis court ball wall at Robert E. Browne Park and electrical repairs at Hall Memorial Park were included in this project. The project was successfully completed under budget. City Council is recommended to adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to $181,797.45, which is 10% of the final contract value. City Council is recommended to authorize the Director of Engineering to issue the Notice of Final Acceptance and to release the performance bond after the one year warranty period without further City Council action, provided all warranty work is completed to the satisfaction of the Director of Engineering.

Alternative: A denial of this request would result in the project not being accepted and the Notice of Completion not recorded, causing a potential delay claim by the Contractor.

California Environmental Quality Act: This project is categorically exempt under Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15303 (New Construction or Conversion of Small Structures) of the California Environmental Quality Act.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of the Pinewood Park Improvements, Projects No. 3412, No. 5095, No. 5096, and No. 7116, subject to a one year warranty period, and reduction of the faithful performance bond to $181,797.45; and granting authorization to the Director of Engineering to issue the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further City Council action.

***12. Adopt a Resolution Awarding a Contract to PCD for Community Center Auditorium Audio Visual Systems Upgrade, Project No. 3406, and Authorize the Director of Engineering to Negotiate and Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On February 3, 2015, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for Community Center Auditorium Audio Visual (AV) Systems Upgrade Project No. 3406. The project provides for the installation of replacement audio equipment for the Community Center auditorium. The Engineer's Estimate for the base bid project work was $175,000.

The project was advertised and three sealed bid proposals were received on March 12, 2015. Bid proposals ranged from $148,563.00 to $285,272.35, and the lowest responsible base bid was submitted by PCD in the amount of $148,563.00. No protest was filed.

As was previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy (copy of policy is included in the Council agenda packet). This policy allows for the timely completion of the Community Center Auditorium AV Systems Upgrade Project, while addressing the need to respond swiftly to construction conditions and approving necessary change orders, in order to limit potential claims or risk to the City. The construction contingency established for this project is $15,000, approximately 10% of the total contract value, and the change order authority would not exceed this amount and would not require an additional appropriation.

Alternative: Denial of this recommendation will result in not proceeding with the Community Center Auditorium Audio Visual System updates.

California Environmental Quality Act: This project is categorically exempt under Section 15301 of CEQA guidelines for maintenance of existing facilities.

Fiscal Impact: None. Sufficient funds are available in the project budget.

Recommendation: Adopt a resolution:

1. Awarding a contract to PCD and authorize the City Manager to execute the contract for the Community Center Auditorium Audio Visual Systems Upgrade in the amount of $148,563.
2. Authorizing the Director of Engineering to negotiate and execute contract change orders for Community Center Auditorium AV Systems Upgrade Project in the cumulative amount not to exceed $15,000.

***13. Adopt a Resolution to Waive Minor Bid Irregularity and Award a Contract to Ghilotti Construction Company, Inc. for the Main Street Pavement Reconstruction, Project No. 4277, and Authorize Director of Engineering to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On February 17, 2015, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for the Main Street Pavement Reconstruction, Project No. 4277. The project provides for the partial reconstruction of South Main Street from Carlo Street to Great Mall Parkway. The work includes the removal and replacement of roadway pavement, installation of new Americans with Disabilities Act (ADA) sidewalk ramps, curb, gutter, sidewalk, and driveway repairs, storm drain improvements, replacement of street trees, and modifications to the traffic signal detection systems at four intersections. An asphalt overlay of Serra Way, West Curtis Avenue and Corning Avenue, from South Main Street to Abel Street is also included. The Engineer's Estimate for the base bid project work was $3,600,000.

The project was advertised and eight sealed bid proposals were received on March 18, 2015. Bid proposals for the base bid ranged from $2,823,287.02 to $3,346,356.90. Two of the eight bids submitted were determined to be nonresponsive. Bay Cities Paving & Grading, which submitted the lowest bid, did not attend any of the mandatory pre-bid meetings and therefore, was deemed nonresponsive. Additionally, the highest bid from O'Grady Paving, Inc. was deemed non-responsive since it did not properly complete the bid proposal forms. Therefore, the lowest responsible bid was submitted by Ghilotti Construction Company, Inc. in the amount of $2,871,691.35.

One protest was received by the City from Ghilotti Construction Company, Inc. The protest letter indicated that the lowest bid by Bay Cities Paving & Grading should be deemed non-responsive since they failed to attend any of the required pre-bid meetings. City staff agreed since the bid documents clearly required all proposers to attend at least one of two pre-bid meetings or else bids would not be accepted.

The lowest responsible bid from Ghilotti Construction Company, Inc. did contain an arithmetic error between an item unit cost and its extension which subsequently adjusted the total base bid price by $180. However, the Public Contract Code requirements and the City's bid documents define this as a "minor bid irregularity" and authorize the City to waive this irregularity and proceed with the award of the contract. Project staff and the City Attorney's office have reviewed this bid irregularity and determined that it is minor and insignificant since the error result in a price difference of only $180, and recommends the Council waive the minor bid irregularity and award the construction contract to Ghilotti Construction Company, Inc.

The bid package included 15 add alternate work items for consideration of pricing after bid opening. The add alternate items provide for the asphalt overlay and new pavement striping of Curtis Avenue, and Corning Avenue from South Main Street to Abel Street. The cost of the additional items is $174,697.40 and would be most cost effective to include at this time. Staff recommends the award of the construction contract including the additional 15 add alternate items for a total cost of $3,046,388.75, which is well below the project's cost plan. Since the base bid came in nearly $700,000 below the estimated cost, staff recommends adding additional work to the project in order to expend all of the RDA funds at this time. The additional work would include: asphalt overlay of Weller Lane; upgrading the signal poles at Serra and Main; installing a slotted curb at the median island in front of the Library; and additional sidewalk and roadway replacement. This additional work would be paid for out of the project construction contingency budget and no additional appropriation is required.

As was previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy. This policy allows for the timely completion of the Main Street Pavement Reconstruction Project, while addressing the need to respond swiftly to construction conditions and approving necessary change orders, in order to limit potential claims or risk to the City. The construction contingency established for this project is $625,000, which is approximately 20% of the total contract value.

Alternative: A denial of this request would result in not completing the reconstruction and pavement overlay improvements along South Main Street, Serra Way, West Curtis Avenue, and Corning Avenue, and the bond funding for this project would be required to be relinquished to the State of California.

California Environmental Quality Act : The project is exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines.

Fiscal Impact: None. Sufficient funds are available in the project budget.

Recommendation: Adopt a resolution waiving a minor bid irregularity, awarding a contract including 15 add alternate items to Ghilotti Construction Company, Inc. and authorizing the City Manager to execute the contract for Main Street Pavement Reconstruction, Project No. 4277, in the total amount of $3,046,388.75, and authorizing the Director of Engineering to negotiate and execute contract change orders for the project in the cumulative amount not to exceed $625,000.

***14. Adopt a Resolution Approving a Contract with Central Medical Laboratory, Inc. for Police Drug and Alcohol Testing for the Annual Not-to-Exceed Amount of $19,500 and Authorizing the City Manager to Execute up to Four Annual Renewals (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: Central Medical Laboratory, Inc. is the only provider of on-call lab technicians to perform blood and/or urine specimen collection for drug and alcohol testing for the law enforcement services in Santa Clara County. The service is provided as directed by the Police Department at various locations within the county, including the City of Milpitas Police Department, hospital emergency rooms, County Jail, Elmwood Jail, various roadside checkpoints, and/or crime scenes. Once the samples are taken they are forwarded to the Santa

Clara County Crime Lab for processing. Occasionally, Central Medical Laboratory, Inc. technicians are subpoenaed to testify as to what occurred at the collection point. Central Medical Laboratory, Inc. has been providing these services to the City since 1996. Testing costs have been averaging approximately $18,000.00 per year, but are expected to increase.

As a result of Central Medical Laboratory, Inc. status as the sole provider within Santa Clara County, the purchase would be made without formally bidding the service in accordance with Municipal Code Section I-2-3.09 "Sole Source Procurement." Staff therefore recommends a one year contract with authorization for the City Manager to extend up to four annual renewals of the contract with up to annual rate increase of 5% based on inflation, increased material cost, or similar factors.

Fiscal Impact: None. The annual estimated expense is programmed for Fiscal Year 2014-15.

Recommendation: Adopt a Resolution approving an agreement with Central Medical Laboratory, Inc. for drug and alcohol testing in the annual not-to-exceed amount of $19,500.00 and for a term from April 15, 2015 to April 14, 2016; and authorize the City Manager to extend the term of the agreement on an annual basis for up to four years with an annual increase of no more than 5% per year, without further City Council approval except appropriation of funds.

***15. Adopt a Resolution Making Findings and Determination of Public Nuisance Regarding Newby Island Resource and Recovery Park Landfill Operation (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: Overwhelming concern from Milpitas and other local citizens regarding odors from Newby Island has been presented to the City in the form of a petition signed by more than 16,000 citizens. These citizens conclude that Newby Island constitutes a public nuisance and its operations are detrimental to the public health and safety. This conclusion is supported by numerous public complaints reported by Bay Area Air Quality Management District (BAAQMD) over the years and most significantly resulting in numerous confirmed complaints and at least five notices of violation regarding Newby Island during the recent months of December and January. This evidence of odor nuisance from Newby Island is further supported by the City of Milpitas Odor hotline which has received over 678 odor complaints during calendar year 2014, and 156 in the month of December of that year, and 394 in the month of January and 110 in the month of February of 2015.

The odor problem created by Newby Island is not new. Odors from the landfill have existed for the entire life of the City of Milpitas since before its incorporation in 1954. As recently as 2003, Milpitas created a stakeholder group intended to address the issues related to odor. The Newby Island operators as well as other stakeholders participated and one of the results was the odor reporting system now employed by BAAQMD. Unfortunately, that reporting system has turned out to be unsatisfactory since it requires that a citizen odor complaint be confirmed by a BAAQMD inspector. Due to the time it takes for an inspector to arrive at the location of the reported odor and time to trace it back to its source, few complaints result in being confirmed by the Air District. Partly this is due to the transitory nature of odors and how they are affected by variable wind conditions. Nonetheless, in a March 16, 2015 City Engineering report, it was noted that BAAQMD has issued three Public Nuisance Violations to Newby Island Landfill and two to the Recyclery at Newby Island. The report (included in the agenda packet) does not indicate what action will be taken as a result of these violations but does note that BAAQMD will conduct a public meeting at Milpitas City Hall on April 23, 2015. The city encourages all interested citizens to appear at the meeting on April 23 to voice their opinions.

Based on the foregoing information and evidence that operations at Newby Island constitute a public nuisance, staff recommends that the City adopt a resolution making a formal finding to that effect and also finding that the expansion project which will increase the height of the landfill by 95 feet will create an odor impact having an unacceptable negative environmental

impact on adjacent properties and nearby properties, including residential and commercial properties within the City of Milpitas.

Fiscal Impact: None.

Recommendation: Adopt a resolution finding public nuisance and negative environmental effect from operations at Newby Island.

XIX. AGREEMENTS

***16. Approve Amendment No. 1 to the Agreement with Ted S. Farr Increasing Compensation by $15,000 to Assist with Implementation of the Santa Clara County Comprehensive EMS Patient Care Data System and Appropriate Funds to the Fire Department Operating Budget (Staff Contact: Rick Frawley, 408-586-2824)**

Background: The City of Milpitas is among several other Santa Clara County cities to receive a grant from Santa Clara County to implement its mandatory Comprehensive EMS Patient Care Data System. System implementation must be completed by July 1, 2015. The deployment and training requirements related to the system implementation must be incorporated in the City's EMS QA.QI policies and procedures. As such, these additional and related consulting services are necessary to complete the project in a timely manner and assure continuity in the quality of the work product.

This project will adhere to the requirements which are mandated in Santa Clara County Prehospital Care Policy 309 - Comprehensive EMS Patient Care Data System. The implementation of the patient care data system will require the purchase and implementation of patient bed side capture computer devices will allow for a unified patient record from the point of initial contact by Milpitas Fire Department resources through transport and eventually to the receiving hospital facility. Additionally, funds will be applied to the transmission and capture of cardiac monitor information for critical patients.

A contractor will assist in the deployment and training required for this project. The City entered into a consulting services agreement with Ted S. Farr on July 1, 2014 in the amount of $19,920 to provide Emergency Medical System consulting services. These services consisted primarily of developing policies, procedures and reporting to assure best practices patient care and compliance with Santa Clara County EMS QA.QI. Staff recommends the City Council approve Amendment No. 1 to increase the Scope of Work and increase the compensation in the amount of $15,000 for a total contract amount of $34,920 to assist in completing the implementation of the countywide Comprehensive EMS Patient Care Data System.

The total amount funded by Santa Clara County Emergency Medical Services (EMS) trust fund for this project is $53,575.04. Expenditure of the funds will be directed to the following areas:

- Tablet computers with peripherals ($15,509.30)
- Cardiac monitor modems with peripherals ($10,910)
- Data plans for tablet computers and modems ($5,520)
- Contractor services for project implementation and training ($15,000). Compensation for additional services are funded entirely from the Santa Clara County grant funding for implementing its countywide Comprehensive EMS Patient Care Data System
- Reserve cardiac monitor peripheral equipment to support longevity of the program ($6,635.74)

Fiscal Impact: None. Compensation for equipment purchases, data plans, and additional services are funded entirely from the Santa Clara County grant for implementing its countywide Comprehensive EMS Patient Care Data System.

Recommendations:

1. Approve Amendment No. 1 to the consultant agreement with Ted S. Farr in the additional compensation amount of $15,000 for implementation of the countywide Comprehensive EMS Patient Care Data System.
2. Appropriate funding to the Fire Department's operating budget in the amount of $53,575.04 from the Santa Clara County Emergency Medical Services trust fund.

***17. Approve an Agreement with Maze & Associates Accountancy Corporation for Professional Auditing Services for a Five Year Period Not to Exceed $441,770 (Staff Contact: Emma Karlen, 408-586-3145)**

Background: The City's agreement with Maze & Associates for professional auditing services expired in 2014. The City of Milpitas issued a Request for Proposals on February 6, 2015. 61 Certified Public Accounting firms were solicited and eight firms responded. In March, a panel consisting of the Finance Directors of Menlo Park and Saratoga along with staff interviewed the top two rated firms. Based on results of the interviews, the panel recommended Maze & Associates for the auditing services. Maze & Associates specializes in governmental auditing and has an extensive base of clients in this region. The firm is committed to meet the City's audit timeline.

Therefore, city staff recommends to City Council to enter into a five-year contract with Maze & Associates. The scope of the service includes issuance of audit reports on the financial statements of the City, Successor Agency, Milpitas Public Financing Authority, Single Audit, Transportation Development Act and Agreed Upon Procedure Reports. Fees for these audit services will not exceed $82,795 for the first year, $85,486 for the second year, $88,264 for the third year, $91,132 for the fourth year and $94,093 for the fifth year.

Fiscal Impact: None. There are sufficient funds available in the FY 2014-15 budget for this service.

Recommendation: Approve an agreement with Maze & Associates Accountancy Corporation for professional auditing services in the total amount of $441,770 and for a term from April 7, 2015 to January 31, 2020.

***18. Approve a Consultant Agreement with Modern Day Marketing, Inc. doing business as GreatLike Media for Development and Placement of an Online Community Awareness Campaign for an Amount Not to Exceed $25,000 (Staff Contact: Leslie Stobbe, 408-586-3352)**

Background: Under the Municipal Stormwater Permit, the City of Milpitas submits annual reporting about actions taken to reduce litter and other pollutants carried by urban runoff into local creeks and South San Francisco Bay and implements a state mandated Long-Term Trash Load Reduction Plan (Plan). The Public Information and Participation component of the permit requires outreach that carry messages to raise awareness about littering, urban runoff, and storm drain debris.

On April 15, 2014, the City Council directed staff to include $8,500 for increased code enforcement and $25,000 for an online advertising campaign in the FY 2014-15 proposed budget and to begin implementation of the City's Plan. After a selection panel of City of Milpitas and Sunnyvale staff reviewed consultant proposals and websites, staff is prepared to conduct an online campaign that targets residents and people working in and visiting Milpitas. Advertising would be designed to engage Internet browsers with a click and registration for more information, and a possible free entry into a contest for giveaways to build a database of engaged browsers. Online methodologies will also track the mobile campaign and gauge public interest. The campaign is slated to begin in May and is expected to run through August of 2015.

Alternative: Not producing an effective outreach campaign reduces achievement towards mandatory trash load reduction in waterways. Current advertising and mailers do carry pollution prevention and litter abatement messages however social media offers a broader and more effective reach of the target audience.

California Environmental Quality Act: The Long-Term Trash Load Reduction Plan and its components are exempt from CEQA under CEQA Guidelines Sections 15307 and 15308 as actions taken to assure the maintenance, restoration, enhancement, or protection of the environment.

Fiscal Impact: None. There are sufficient funds in the current project budget.

Recommendation: Approve a consultant agreement with Modern Day Marketing, Inc. doing business as GreatLike Media, for development and placement of an online community awareness campaign for an amount not-to-exceed $25,000.

***19. Approve Agreements with the County of Santa Clara for Collection of AB939 Implementation Fees and Administration of the Countywide Household Hazardous Waste Collection Program (Staff Contact: Steven Machida, 408-586-3355)**

Background: Since 1992, the cities of Santa Clara County have annually executed agreements with the County of Santa Clara authorizing the County to collect fees and to provide waste diversion services on behalf of the cities. By these agreements, the County will collect $4.10 per ton of waste disposed at landfills within the County in FY 2015-16, a fee that has not increased since FY 2009-10. From this fee, the County will remit $1.50 per ton to the city of waste origin for use in recycling programs. The County will use the remaining $2.60 per ton to provide household hazardous waste collection services to residents throughout the County. The County will remit any funds in excess of those needed for the annual household hazardous waste program to the cities of waste origin the following year.

For FY 2014-15, the County projects that countywide landfill disposal will be 1,226,530 tons. The $4.10 per ton tipping fee will generate $5,028,773, of which $1,839,795 will be remitted to the cities for their recycling programs and $3,188,978 will be available for the countywide household hazardous waste collection program. The City of Milpitas is expected to generate 63,181 tons of waste or 5.2% of the total, and so expects to receive $94,772 for its recycling programs. Based upon past experience, staff anticipates the County to remit about $50,000 of unused household hazardous waste fees to the City this year. This funding is programmed into the City's FY 2014-15 solid waste operating budget and can be used for activities supporting the City's compliance with State recycling and waste diversion laws.

Alternatives: The AB939 agreement allows collection of fees from July 1, 2015 to June 30, 2018 upon approval by all 15 participating cities and the County by June 30, 2015 or jeopardize continuation of the program's existence. The HHW agreement allows access to the County's long-standing program and amenities from July 1, 2015 to June 30, 2018 or requires cities to create their own fully-functioning, self-operational HHW program.

California Environmental Quality Act: The item is exempt from CEQA as there will be no physical change to the environment.

Fiscal Impact: The recommended action will provide approximately $94,772 in revenue for the City's solid waste fund.

Recommendation: Approve agreements with the County of Santa Clara for collection of AB939 Implementation Fees and administration of the Countywide Household Hazardous Waste Collection Program.

***20. Approve Amendment No. 1 to the Consultant Services Agreement with RMC Water and Environment, Inc. for Utility Engineering Support (Staff Contact: Steven Machida, 408-586-3355)**

Background: On October 7, 2014, the City entered into an Agreement with RMC Water and Environment, Inc for support to backfill City staff vacancy in the Utility Engineering Section for water/recycled water distribution and wastewater collection systems through June 30, 2015. Staff recommends increasing the agreement in the amount of $58,000 for continued support anticipated to be needed through December, 2015. This will bring the total value of the agreement to $85,734. Proposed Amendment No. 1 is included in the Council packet.

Alternative: Denial of this request will result in delayed completion of some Utility Engineering tasks. Tasks include but are not limited to: regulatory compliance reporting for water, sewer, and urban runoff programs, developer project plan checking, implementing new water conservation requirements, and participating in and reviewing documentation for regional water, sewer, urban runoff, and solid waste programs.

California Environmental Quality Act: This action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None. There are sufficient funds available in the Utility Engineering budget due to salary savings.

Recommendation: Approve Amendment No.1 to the Consultant Services Agreement with RMC Water and Environment, Inc for Utility Engineering support in the amount of $58,000 and for a term through December 31, 2015.

***21. Approve Agreements with Harris & Associates, Inc. and CSG Consultants, Inc. for Engineering Support Services for the Land Development Engineering Division (Staff Contact: Steven Machida, 408-586-3355)**

Background: Due to current peak work load, development project priorities with new submittals of land development projects, and in order to meet project schedules of current projects and anticipated projects, staff is recommending additional consultant services to augment staff resources to assist with plan review services. Harris & Associates, Inc. and CSG Consultants, Inc. will provide services related to private development projects, which are fully reimbursed from developer funds.

Staff recommends that Harris & Associates, Inc. and CSG Consultants, Inc. provide support through the end of the current fiscal year. Staff negotiated a scope and fee for these services by the following amounts: Harris and Associates not to exceed $80,000, for a Principal Engineer level staff, and CSG Consultants, Inc. not to exceed $70,000 for an Associate Engineer level staff. The City is in the process of recruiting to fill these positions and the two proposed agreements will provide assistance in the interim.

Alternative: Denial of this request would result in delays in the review of development projects causing potential delay claim by developers under the Permit Streamlining Act.

California Environmental Quality Act: This project is exempt from CEQA pursuant to Section 15061(b)(3) since it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Fiscal Impact: None. Salary savings from the two vacant Associate Civil Engineer Positions will fund a majority of these staff argumentation services. Remaining consultant expenses are reimbursable through the private development projects.

Recommendation: Approve agreements with Harris & Associates, Inc. in the amount of $80,000 and with CSG Consultants, Inc. in the amount of $70,000 for terms from April 7, 2015 to December 31, 2015 for engineering support services.

***22. Approve a New Capital Improvement Program Project for the McCandless Park, a Budget Appropriation and a Consultant Agreement with Environmental Foresight, Inc. for Outreach and Design Services for McCandless Park, Project No. 5102 (Staff Contact: Steve McHarris, 408-586-3273)**

Background: McCandless Park and Joint-Use Park Area
The Transit Area Specific Plan (TASP) has designated a large parcel located on the east side of McCandless near Montague Expressway as school and public park area. The Milpitas Unified School District is currently underway in their design of an elementary school for the portion of the site that the City will sell to the MUSD under a Purchase and Sale Agreement previously approved by the City Council. In addition, the MUSD is also acquiring some additional land to meet the needs for the school. Figure 1 (visual layout in the agenda packet) illustrates the current preliminary school design, City park and joint-use area.

A portion of the City owned parcel will be used as joint-use for park and school recreation facilities. The scope of the McCandless City Park and Joint-Use School Project is to commence design of the City park and joint-use parcels to develop a state-of-the-art recreational facility for the community. The design effort for street frontage, trail connections, park amenities, and joint-use school area are required to develop the project from initial program studies through final construction.

The Planning and Neighborhood Services Department is requesting approval from the City Council to enter into a consultant agreement with Environmental Foresight, Inc. for high quality public outreach and landscape design services for the McCandless City Park and Joint-Use School Project site in the amount of $248,400. A summary of the scope of work includes:

- Meetings with City and School District staff to solicit input on the needs for the park site;
- Conduct two community workshops to propose and finalize park site design;
- Implementing highly skilled professional design services in preparing the overall plan and design of the proposed park;
- Prepare landscape construction documents for building permitting, bidding, and construction including a 100% City submittal and one (1) round of reasonable landscape related City plan check comments; and
- Provide assistance to landscape related bidding clarifications, landscape submittals, and site observations for the approved landscape Construction Documents.

City Council is also requested to approve a new Capital Improvement Project (CIP) for the development of the new McCandless Park. A total of $300,000 in funding is required for the layout and schematic design services and project administration from the Transit Area Specific Plan (TASP) impact fees. As part of the park design process, the park design will be reviewed by the Parks, Recreation, & Cultural Resources Commission, the Planning Commission, and the City Council. Staff will have a better understanding of the park construction cost once the design of the park is completed.

Alternatives:
1) City Council may reconsider the proposed work scope and if so, delays will occur in park design and construction.
2) City Council may deny approval of new CIP and consultant services agreement.

Fiscal Impact: A budget appropriation is requested in the amount of $300,000 from the Transit Area Specific Plan impact fees fund contributions for McCandless Park, Project No. 5102.

Recommendations:

1. Approve new Capital Improvement Program Project No. 5102 for McCandless Park.
2. Approve a budget appropriation of $300,000 from Transit Area Specific Plan (TASP) impact fees to the new CIP No. 5102.
3. Approve an agreement with Environmental Foresight, Inc. in the amount not to exceed $248,400 to prepare the McCandless Park Project No. 5102 for a term from April 7, 2015 to June 30, 2019.

XX. DEMAND

***23. Approve Payment to Jensen School of Performing Arts for Recreation Classes Per Terms of Existing Agreement (Staff Contact: Dale Flunoy, 408-586-3228)**

Background: The City of Milpitas and Jensen School of Performing Arts entered into a recreation services agreement effective from July 1, 2014 to June 30, 2015. The agreement was for general Youth Program classes in an amount of $20,000.

Due to unanticipated high enrollments, program participation and adding Pre-K Enrichment classes, new compensation to the contractor needs to increase by $20,000, for a total payment amount of $40,000. Funds were approved by the City Council in the FY 2014-15 Recreation Services budget and are available in the department's operating budget for these services.

Fiscal Impact: None.

Recommendation: Per existing agreement with Jensen School of Performing Arts for Pre-K Enrichment and Youth Program classes, authorize payment in the amount of $40,000.

XXI. ADJOURNMENT

NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 21, 2015

March 2015						
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				

May 2015						
S	M	T	W	T	F	S
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24	25	26	27	28	29	30
31						

MILPITAS CITY COUNCIL CALENDAR

April 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 **5:30 PM**-Veterans Commission (DG) **7:00 PM**-Community Advisory Commission (CM)	**2** **5:30 PM**-VTA Board of Directors (JE)	**3**	**4**
5	**6** **7:00 PM**-Parks, Recreation & Cultural Resources Commission (GB)	**7** **5:30 PM**-Budget Study Session **7:00 PM**-City Council	**8** **12:00 PM**-Santa Clara Valley Water Commission (GB) **4:00 PM**-Milpitas Oversight Board **7:00 PM**-Planning Commission	**9** **4:00 PM**-VTA Policy Advisory Committee (CM) **4:30 PM**-Treatment Plant Advisory Committee (JE) (San Jose) **7:00 PM**-Youth Advisory Commission (DG) **7:00 PM**-Cities Assoc of SCC (JE)	**10**	**11**
12	**13** **6:00 PM**-Economic Development Commission (CM) **7:00 PM**-Arts Commission (DG) *@Community Center Rooms 7-8*	**14**	**15**	**16** **10:00 AM**-Santa Clara VTA Congestion Management Program & Planning Committee (JE) **1:30 PM**-County Library JPA Board (CM)	**17**	**18**
19	**20** **6:00 PM**-Campaign Finance Reform Committee **7:00 PM**-Telecommunications Commission (GB)	**21** **6:00 PM**-CIP Study Session **7:00 PM**-City Council	**22** **7:00 PM**-Planning Commission	**23** **5:30 PM**-Milpitas Chamber of Commerce Board (DG) **6:00 PM**-Sister Cities Commission (MG) **6:00 PM**-BAAQMD Public Meeting on Odor – Council Chambers	**24**	**25** **11:30 AM**-2015 Commissioners Recognition Lunch
26	**27**	**28** **1:30 PM**-Senior Advisory Commission (JE) **6:00 PM**-Recycling & Source Reduction Adv. Comm. (GB)	**29**	**30** **12:00 PM**-Terrace Gardens Board of Directors (DG)		

Updated March 27, 2015

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Meeting of Milpitas City Council**
Date:	**Tuesday, March 17, 2015**
Time:	**6:00 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

CALL TO ORDER

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo Giordano and Grilli

ABSENT: Councilmember Barbadillo was absent at roll call. He arrived later in the Closed Session at 6:10 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss litigation and labor negotiations.

City Council then convened in Open Session at 7:08 PM.

ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Giordano read a quote from President John F. Kennedy about public service.

MEETING MINUTES

Motion: to approve the minutes of March 3, 2015 City Council meeting

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for March and April 2015

City Manager Tom Williams reported that the City Council Finance Subcommittee would hold a meeting at 4:00 PM the following day, March 18.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

PUBLIC FORUM

Nika Chen, Milpitas resident, wished to discuss odor issues and Newby Island. She asked the City Council to consider using another company because Republic was not doing a good job. When the contract expired in 2017, she and other residents did not agree to extend the contract with Republic. Other landfills were close to Milpitas that did not produce such bad odors as at Newby Island.

Robert Marini, Milpitas resident, commented on sewer rates.

Four girls who were actresses with the Milpitas Children's Theatre Alliance came to announce the group's "Community 5 K Fun Run/Walk" on May 31. They sought support for their program.

Mayor Esteves encouraged residents to support the youth and the Children's Theatre by joing th fun run, or offereing financial support for the run.

Rob Means, 1421 Yellowstone Ave. resident, discussed a climate change march held in New York last fall October 21, 2014 and showed video footage of the large crowd at that event.

Voltaire Montemayor, Milpitas resident, said neighboring towns did not have plastic in the stores. It was messy in some cars while it was necessary to train people how to sort plastic.

Ray Zhang, 13 year resident, asked for help to fight a public nuisance, relative to odors. Mayor Esteves asked him to wait for that topic on the agenda.

ANNOUNCEMENTS None.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS City Attorney Ogaz asked the Mayor and Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

APPROVAL OF AGENDA Motion: to approve the agenda

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

CONSENT CALENDAR Motion: to approve consent calendar items (noted by *asterisk), as amended

Vice Mayor Montano requested removal of Item No. 6 (Memorial Plaque), Item No. 10 (CFD property) and No. 11 (Trail Bridge) from the consent calendar.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

* 5. Commission Appointments	To the Community Advisory Commission, newly appointed Adrian Morel as Alternate No. 2 to a term that will expire in January 2017. To the Senior Advisory Commission, re-appointed Melba Holliday as a regular member to a term that will expire in December 2016.
* 9. Resolution – South Main Street Improvements	Adopted Resolution No. 8456 granting final acceptance of and releasing the warranty bond for the South Main Street Improvements - Paragon Project No. 3204.
*12. New CIP No. 2005	1. Approved a new Capital Improvement Program Project No. 2005 for the Lower Penitencia Creek Pedestrian Bridge Project. 2. Approved a budget appropriation of $150,000 from Transit Area Specific Plan (TASP) impact fees and $500,000 from developer contributions. 3. Approved Amendment No. 1 to the Agreement with Biggs Cardosa Associates, Inc. in the amount of $184,500 and for a term until March 18, 2016 for the Lower Penitencia Creek Pedestrian Bridge.
*13. Agreement related to McCarthy Development	Approved the Assignment and Assumption Agreement between the City, BRE/Milpitas LLC and Hudson Campus Center LLC relating to the 65 acres along North McCarthy Boulevard between Ranch Drive.
*14. Amend Agreement with CSG	Authorized the City Manager to execute Amendment No. 3 to the agreement with CSG for fire inspection and plan review services for a total amount-not-to-exceed $238,200 for Fiscal Year 2014-15.

*15. Pay Burton Fire

Authorized payment of invoices to Burton Fire totaling $28,162.65 for the Ladder Truck TK86 repairs.

PUBLIC HEARING

1. Town Center Zoning Ordinance

Planning Director Steve McHarris provided history on zoning from 1960s to current day in Town Center, as regards allowance for residential development. There was some discussion on notifying property owners for five public meetings held on this subject. 132 acres comprised the Town Center zone, with a map showing this area. Mr. McHarris described three possible alternatives for the Council to vote on this evening regarding zoning of residential and commercial property.

Following a few comments by the City Council, Mayor Esteves opened the public hearing.

Rob Means, 1421 Yellowstone resident, felt the original staff recommendation to allow residential above commercial on the first floor made the most sense.

Farouk Laiji, from Shappell Properties, explained that his company was the largest single stakeholder in the Town Center area, next door to the City. He referred to a letter sent to City Council dated March 12 opposing the zoning amendment to deny opportunity for any residential development. He urged consideration for high density housing at this location and to be collaborative with stakeholders involved, especially businesses. He suggested a traffic study and economic development impact study in order to determine best use.

Steve Siddell, Milpitas resident, attended one of the early meetings and saw what happened at the Planning Commission. He did not believe the public heard from one significant group of people, who may have been intimidated at the Commission meeting.

Tom Valore, 25 year resident, saw two situations when City staff brought forward solid recommendations, while these were being rejected. He felt it was at whim, despite the economic soundness of the proposal. He would appreciate when making decisions, that those were supported by sound investigation and that Council not summarily dismiss staff's professional recommendation.

Voltaire Montemayor, resident, talked about modifications of buildings in Town Center.

(1) Motion: to close the public hearing, after hearing five speakers

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

Councilmember Giordano would sustain her previous vote supporting the past recommendation from Planning Commission and staff to permit live/work units in Town Center zone, and she would also support no residential on the first floor, as previously brought. She would vote no on newly proposed ordinance.

Councilmember Grilli felt the City had not studied economic impact adequately and on this topic, the City was going too fast. She thought more outreach to residents and with Shappell was necessary. Bringing in some good commercial development was needed. She did not support the ordinance on the agenda this evening.

Vice Mayor Montano had heard from residents that they have to go outside Milpitas to shop for certain things, and would like to see more commercial at Town Center. She would vote to re-zone this area to be commercial only.

Councilmember Barbadillo knew there was lots of development going on and he wanted to see a balance. Mostly, he saw only residential developments being built in the City. He spoke on behalf of citizens, where there voices must be heard, and wanted the City's "heart" in the Town Center. He urged keeping the Town Center concrete as originally intended, as a shopping and commercial area, not residential.

Mayor Esteves remarked on the frequency of studies by governments, which he felt were an example of government procrastination. He discussed where to focus building houses, as it was occurring now in the Transit Area, near the new BART station. He felt commercial and retail development in Town Center was most appropriate.

(2) Motion: to adopt Resolution No. 8455 approving the General Plan Amendment to eliminate references to residential development, residential densities, and mixed-use development in the Town Center

Motion/Second: Councilmember Barbadillo/Vice Mayor Montano

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano, Grilli)

City Attorney Mike Ogaz read aloud the title of Ordinance No. 38.820, "An Ordinance of the City Council of the City of Milpitas Amending Chapter 10 of Title XI of the Milpitas Municipal Code Prohibiting All New Residential Uses in Town Center Zoning District."

(3) Motion: to waive the first reading beyond the title of Ordinance No. 38.820

Motion/Second: Councilmember Montano/Councilmember Barbadillo

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano, Grilli)

(4) Motion: to introduce Ordinance No. 38.820 to prohibit residential use in Town Center

Motion/Second: Councilmember Barbadillo/Vice Mayor Montano

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano, Grilli)

UNFINISHED BUSINESS

2. Odor Control Update

City Engineer Steven Machida gave an update on odor reporting to both the City of Milpitas and to the Bay Area Air Quality Management District hotline. He announced a public meeting scheduled by BAAQMD on Thursday, April 23 at City Hall.

Vice Mayor Montano asked about the process and the staff who come from the District out to Milpitas to verify an odor complaint. She asked if they were certified and sought more clarification on that process. Mr. Machida responded.

Councilmember Giordano remarked that this was an ongoing long-time issue for the City, and she always backed up those opposing the odors.

Motion: to receive the oral report from the City Engineer on odor update

Motion/Second: Councilmember Giordano/Councilmember Barbadillo

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

3. Report on Crime

Police Chief Steven Pangelinan reported statistics on major crime figures, based on FBI Crime Index categories. He highlighted a recent increase in aggravated assaults from 2013 to 2014, the majority of which were domestic-violence related.

Mayor Esteves asked how many arrests were made on the 182 burglaries. Chief Pangelinan said he could provide that information later to the Mayor and Council. He then discussed effects of the state realignment of prisoners in 2011, which impacted the increase of some categories of crimes in Milpitas.

Councilmember Giordano thanked the Chief for numbers provided, and felt his report would be helpful to hear each year. She asked how many police officers the City had in 2004 versus 2014. The Chief replied there were 85 sworn officers today and the peak was 95 sworn officers in the past. Ms. Giordano asked about volunteers and reserve officers, which the Chief responded regarding the few that Milpitas did utilize.

Vice Mayor Montano asked about drug crimes and whether DUIs were included and the Chief said no. She asked about surveillance cameras, stating her belief there was a need for those around the City, strategically placed where there was a lot of traffic.

Motion: to receive the oral report from the Police Chief on crime statistics in Milpitas

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

4. RFP for Milpitas Community Television

Information Services Director Mike Luu reviewed the Goals and Objectives for an Operator of Channel 26 television station proposed Request for Proposals (RFP).

Councilmember Giordano inquired about the cost of doing an RFP. Mr. Luu replied it would be only in terms of City staff time to work on it and advertise the RFP. She wanted to know what the cost of the service would be and staff said the response to the RFP (from operators) would provide estimated cost to run the station.

Vice Mayor Montano asked for further information on the three alternatives given.

Councilmember Barbadillo asked for statistics on who watched channel 26. Mr. Luu explained neither he nor the City could get those figures from Comcast directly. He did know about submittal requests to show programs, about 6 – 12 per month.

Councilmember Grilli asked if those people were charged a fee, asking for their shows to be broadcast. Staff said, yes per the fee schedule.

Mayor Esteves asked about alternative two, to renegotiate a new deal with Milpitas Community Television (MCTV). The Mayor asked if the TV26 board could participate in the RFP process and staff replied yes.

Councilmember Grilli asked about the non-profit holding funds provided by Comcast. Mr. Luu replied that MCTV still had most of those funds, with the purpose to run the station. Staff would need to review the franchise agreement to find out the exact answer. City Manager Williams felt the funds would stay with the channel operator.

Motion: to receive the report from the Information Services Director on the Request for Proposals (RFP) objectives and to direct staff to move forward with issuing the RFP for Milpitas Community Television with the goals and scope of work

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

REPORT OF COMMISSION

6. Memorial Plaque at Milpitas Sports Center

This was heard following item No. 1.

Recreation Services Manager Renee Lorentzen defined the recommendation from the Parks, Recreation and Cultural Resources Commission to create and install a memorial plaque in memory of the recently deceased young resident, near Farm Fields at the Milpitas Sports Center. The plaque would be unveiled in mid-June.

Vice Mayor Montano wanted to highlight this action in memory of the special little boy, and she requested to re-name dugout area as "Christian's Dugout" at the baseball fields.

Mayor Esteves wanted to support the recommendation on the agenda for the plaque, but did not want to add onto recommendation. The Mayor felt a plaque in memory was very honorable for any resident in memoriam. He did not want to add on to that motion.

Councilmembers Grilli and Barbadillo supported the Vice Mayor on the dugout name.

Motion: per recommendation of the Parks, Recreation and Cultural Resources Commission, approve a memorial plaque for installation near the Milpitas Sports Center Little League Farm Field in memory of 8-year-old Christian Dalugdug and additionally name the baseball dugout as "Christian's dugout"

Motion/Second: Vice Mayor Montano/Councilmember Grilli

Motion carried by a vote of: AYES: 4
NOES: 1 (Esteves)

7. Veterans Commission Workplan

Human Resources Director Carmen Valdez with Veterans Commission Chairman Denny Weisgerber presented the Veterans Commission work plan for 2015 – 2016. She acknowledged several Commissioners in the audience. She provided history of the five year old Commission and its activities, including the annual Veteran of the Year program and the fundraising Veterans Car Show on city grounds.

Chair Weisgerber described the three programs that benefited from the car show proceeds: Semper Fi Fund, Family Supportive Housing Inc. and VA Palo Health Care Chaplain's Fund. The current work plan would add The Blue Star Memorial Program sponsored by Garden Club of Milpitas, with a plaque to be placed at the entry to Veterans Plaza on Veterans Day.

Staff described 85 veterans currently registered on the City's email list, after doing regular outreach throughout the City. Mayor Esteves encouraged further outreach to all residents so the available services could be broadly advertised.

Councilmember Giordano served as Council liaison to this Commission, and was trying always to do more outreach. The Commission needed more funds for that purpose so she urged Council to add dollars to the budget for the Commission.

Vice Mayor Montano agreed with getting more veterans to be involved so they know about services. She also urged placement of flags all along Calaveras Blvd. on the median, along that main road in Milpitas at significant holidays, working with Caltrans.

Mayor Esteves referred to Memorial Day and Veterans Day ceremonies. He suggested a campaign to distribute flags to residents, to put out flags at home on those holidays. He was also concerned about veterans trying to find jobs and helping them.

Motion: to accept the oral report provided at the meeting and to approve the 2015 Veterans Commission Work Plan, with several additions to the work plan as suggested by City Councilmembers (on budget, flags, and outreach efforts)

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

NEW BUSINESS

8. Update on Bay Area Rapid Transit station construction in Milpitas and parking garage

Planning Director Steven McHarris explained the changed status of the parking garage at the under-construction Milpitas BART station. He displayed overhead the Pedestrian Bridge walkway design update. Staff from the Santa Clara Valley Transportation Authority (VTA) were also present and could provide update to the Council.

Mr. McHarris described the recent VTA funding reduction for the parking garage architecture, which required that agency to plan to go from a $5 million structure reduced to $2.5 million, with reduced parking spaces. The revised parking structure design was displayed, in which several were not as aesthetically pleasing as the original modern design plan intended. The pedestrian bridge design between the parking garage and the BART station was also shown.

Mayor Esteves agreed with staff needing to work with VTA on high standards on the parking garage, while he emphasized the retail needed to be planned well too. The City could start discussing the $17 million amount with VTA.

Councilmember Barbadillo asked if staff had the dollar amount on the various design alternatives now on the table due to budget cuts. He asked about past commitment to parking structure design.

Vice Mayor Montano asked about high density zoning on the sites displayed and about additional improvements in the station area. She urged neon lights, little cornfields in design, and liked the bridge with the waves.

Mayor Esteves insisted there would be retail open on day one at the parking structure.

Next, VTA staff member Carolyn Gonot responded to the Mayor's questions on retail space getting built. Planning Director Steve McHarris and Economic Development Manager Edesa Bitbadal replied with staff's view, and including need for a possible economic impact study on retail needs for that BART area.

Ms. Gonot reported that Montague Light Rail Station was planned to be closed starting on March 23, 2015 for five months to start construction activity there for BART. A shuttle service will be available for users of that station.

Motion: to receive report on parking garage at BART station from the City's Planning Director and brief response comments from VTA staff

Motion/Second: Councilmember Giordano/Mayor Esteves

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

RESOLUTION

10. Annex Property into CFD 2005-1 for Waterstone

Vice Mayor Montano addressed the City Engineering staff, expressing a need to ensure there was a pedestrian signal light at this new development. Mr. Machida responded that the project could include beacon (flashing) lighting at the crosswalk nearby.

(1) Motion: to adopt Resolution No. 8457 annexing real properties located within Final Tract Map No. 10270 into Community Facilities District No. 2005-1

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

(2) Motion: to approve a Subdivision Improvement Agreement between the City of Milpitas and Lennar Homes of California, Inc. for public improvements associated with Final Tract Map No. 10270 (Waterstone)

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

(3) Motion: to approve Final Tract Map No. 10270 (Waterstone) and public improvement plans 2-1193, construction documents for the associated public improvements

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

AGREEMENTS

Three items were approved on consent calendar.

11. Joint Use Agreement with SCVWD for Trail and Pedestrian Overcrossing

Vice Mayor Montano commented that the City needed to aggressively look for grants for the pedestrian overcrossing open space at this project site.

Motion: to approve the Environmental Assessment No. EA 14-0005 for two Addendums to the Transit Area Specific Plan Final Environmental Impact Report for the Lower/ East Penitencia Creek trails and proposed bridge, and approve the Joint Use Agreement between the City of Milpitas and the Santa Clara Valley Water District

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

ADJOURNMENT

Mayor Esteves adjourned the joint meeting at 11:57 PM.

Meeting minutes drafted and respectfully submitted by
Mary Lavelle, City Clerk

List of Attachments for Public Hearing No. 01

– Public Art Requirements for Private Development Projects

Conduct a Public Hearing and Introduce Ordinance No. 38.821 relating to Public Art Requirements for Private Development Projects (Staff Contact: Adam Petersen, 408-586-3274)

Attachments:

01-A	Draft Ordinance No. 38.821
01-B	03-11-15 Planning Commission Staff Report
01-C	03-11-15 Planning Commission Meeting Minutes
01-D	Adopted Planning Commission Resolution 15-013

REGULAR 1A

NUMBER: **38.821**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE ADDING SECTION 14 TO THE ZONING CODE RELATING TO PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT**

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:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

RECITALS:

WHEREAS, Title XI, Chapter 10, entitled "Zoning" of the Milpitas Municipal Code sets forth the Zoning standards for the City of Milpitas; and

WHEREAS, on February 18, 2014, the City Council directed staff to prepare an ordinance requiring Public Art on private development projects for the City Council review and consideration; and

WHEREAS, the Milpitas Zoning Code is proposed to be amended to add a Section 14 entitled "Public Art Requirements for Private Development Projects"; and

WHEREAS, on March 11, 2015, the Planning Commission conducted a duly noticed public meeting and adopted Resolution No. 15-013 recommending the City Council amend the Milpitas Zoning Code to add a new Section 14 entitled "Public Art Requirements for Private Developments"; and

WHEREAS, on April 7, 2015, the City Council conducted a duly noticed public hearing to consider the recommendation from the Planning Commission to amend the Zoning Code to add a new Section 14 entitled "Public Art Requirements for Private Developments."

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. FINDINGS

Zoning Text Amendment (Section XI-10-57.02.G.3) - The City Council makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA15-0001:

Zoning Text Amendment (Section XI-10-57.02.G.3)

1. *The proposed amendment is consistent with the General Plan.*

The proposed Ordinance is consistent with and implements the City of Milpitas' General Plan. The Ordinance will enhance the quality of life for residents in the City by contributing architectural variety and design to the aesthetic environment. Public art enhances civic pride and helps define the City's image to the public and visitors alike. This contributes to a sense of identity and place. It makes the City of Milpitas more livable and more visually stimulating, which creates a benefit to the public and enhances the quality of life.

The project is also consistent with the following General Plan Guiding Principles and Policies:

Guiding Principle 2.a-G-7 – When considering development proposals, seek "community benefit," such as upgrading infrastructure facilities, constructing new infrastructure facilities, and funding contributions to programs.

Implementing Policy 2.a-I-17 – Foster community pride and growth through beautification of existing and future development.

The addition of the Public Art for Private Development Ordinance is consistent with the General Plan because it constitutes a "community benefit" by upgrading the aesthetic environment of the City. The requirement for art work makes the City a more livable and visually stimulating place which ultimately benefits the community. Further, the Ordinance creates a sense of place and identity that fosters community and pride and growth through

beautification of the existing and future development. For these reasons, the proposed Ordinance is consistent with the General Plan.

2. *The proposed amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.*

The proposed zoning amendment will result in a more aesthetically pleasing environment. Incorporating art work in private developments, and throughout the City, makes buildings and their grounds more welcoming, and it creates a deeper interaction with the places visited, and which citizens work and live. For these reasons, the public health, safety and welfare will be benefited by the proposed Ordinance.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10 of the Milpitas Zoning Code entitled "Zoning" is amended to add a new Section 14 entitled "Public Art Requirements for Private Development" to read as follows:

Section 14 - Public Art Requirements for Private Development

XI-10-14.01 Definitions

"Affordable Housing" is defined in Section XI-10-54.15.D of the Zoning Code.

"Building Development Costs" means those construction costs as declared on building permit applications, and as accepted by the Building Official. Building permit applications shall include building, plumbing, mechanical and electrical permit applications for the project.

"Developer and/or Owner" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality (other than the City of Milpitas), industry, public or private corporation, or any other entity that undertakes any construction within the City subject to the requirements in this Section 14.

"Public Art" is a process which results in the incorporation of original works of art by artists in publicly accessible spaces and which serves a socio-environmental function identifiable with people; is accessible to the mind and the eye; is integral to the site and responds to the concept of place making; is integrated with the work of other design professionals; is of high quality; serves the City by enhancing the quality of life for citizens and contributes to the City's prestige; is unique to its moment in time and place.

"Public Art Program In-Lieu Contribution" means the percentage of Building Development Costs required herein.

"Public Art Projects" are projects which involve artists working through the public art process that result in the creation of original works in publicly accessible spaces that include but are not limited to paintings, mural decorations, inscriptions, stained glass, fiber work, statues, reliefs or other sculpture, monuments, fountains, arches, or other structures intended for ornament or commemoration, carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, crafts both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials. Public Art Projects also include artists serving on design and development teams to identify opportunities to incorporate art in publicly accessible space.

"Publicly Accessible Art" means art that is accessible to the general public.

XI-10-14.02 Purpose and Intent

This Section 14 is intended to promote the aesthetics and arts in the City of Milpitas by requiring the inclusion of a public artwork component in new private development projects in Milpitas. A policy is hereby established to require certain private developments to include Publicly Accessible works of art for placement on the development site or contribute a Public Art Program In-Lieu Contribution as a condition of project approval.

Developers and/or Owners are encouraged to employ Milpitas artists or arts organizations to fulfill the Public Art requirement.

XI-10-14.03 Contribution Requirements

A. Calculation

1. Nonresidential Building Developments. Private nonresidential building developments involving Two Thousand (2,000) square feet or more of new floor area shall devote an amount not less than one percent (1%) of Building Development Costs for acquisition and installation of Publicly Accessible Art on the development site.

2. Residential Building Developments. Private residential building developments of twenty (20) or more new dwelling units shall devote an amount not less than one percent (1%) of Building Development Costs for acquisition and installation of Publicly Accessible Art on the development site.

B. Public Art Review

All proposed Public Art to be installed on a development site under this Section 14 shall first be reviewed and approved by the Art Commission for its artistic value and appropriateness in light of the size of the development project. The cost of the proposed Public Art shall not be the sole reason for rejecting the proposed Public Art.

C. In-Lieu Contribution

Compliance. At the discretion of the Developer and/or Owner, in lieu of installing on-site Public Art, the Developer and/or Owner may provide a Public Art Program In-Lieu Contribution to be deposited into the Public Art Fund for acquisition and placement of Public Art throughout the City.

D. Subsequent Removal of Public Art or Alternative Compliance Space

If the Developer and/or Owner satisfies the Public Art requirement in accordance with subsection (A)(1), (A)(2), above, the Public Art previously installed on the development site may only subsequently be removed if the Developer and/or Owner makes a Public Art Program In-Lieu Contribution equivalent to the original amount to the Public Art Fund.

E. Exclusions

The requirements of this Section 14 shall not apply to an Affordable Housing development if the Developer and/or Owner demonstrates to the satisfaction of the City that said requirements would cause the development project not to be economically feasible.

XI-10-14.04 Public Art Fund

Public Art Program In-lieu Contribution shall be placed in the Public Art Fund. The fund shall be used exclusively to (1) provide sites for works of art, (2) acquire and install works of art, (3) maintain works of art, or (4) fund other administrative costs associated with the Public Art Program. The Art Commission shall recommend utilization of monies in the Public Art Fund to the City Council.

XI-10-14.05 Compliance

Compliance with the provisions of this Section 14 shall be demonstrated by the Developer and/or Owner at the time of filing the Building Permit application as follows: (a) payment of the full amount of the Public Art Program In-Lieu Contribution, or (b) written proof to the Building Department and the Public Art Program of a contractual agreement to commission or purchase and to install the requested artwork on the development site by a date approved by City. The Developer and/or Owner shall provide the City with proof of installation of the requested artwork on the development site or proof of full payment of the Public Art In-Lieu Contribution before issuance of the certificate of occupancy, unless the City has approved some other method of assuring compliance

with the provisions of this Section 14. In the case of installation of Public Art on the development site, the Developer and/or Owner shall maintain said artwork in proper condition on an ongoing basis.

XI-10-14.06 Violations of this Section

In addition to other fines or penalties provided by State or municipal law, the City may revoke or suspend any permit granted to any Developer and/or Owner who violates the provisions of this Section 14.

SECTION 4. 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 5. 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.

1B

MILPITAS PLANNING COMMISSION AGENDA REPORT

March 11, 2015

APPLICATION: **ZONING TEXT AMENDMENT – ZA15-0001 – A request for a Zoning Text Amendment to adopt new provisions in the Zoning Code relating to Public Art Requirements for Private Development Projects.**

RECOMMENDATION: **Staff recommends that the Planning Commission: Conduct the public hearing and adopt Resolution No. 15-013 recommending the City Council adopt Zoning Amendment No. ZA15-0001 to amend the Zoning Code to add new provisions relating to Public Art Requirements for Private Development Projects.**

LOCATION:
Address/APN: Citywide

PEOPLE:
Project Applicant: City of Milpitas
Consultant: NA
Property/Business Owners:
Project Planner: Adam Petersen, Senior Planner

LAND USE:
General Plan Designation: All
Zoning District: All
Overlay District: NA

ENVIRONMENTAL: The project is exempt in accordance with the California Environmental Quality Act (CEQA) Section 15061(b)(3) "Review for Exemptions," Section 15060(c)(2) "Preliminary Review," Section 15183 "Projects Consistent with a General Plan, Community Plan or Zoning," and Section 15262 "Feasibility and Planning Studies."

BACKGROUND

History

On February 18, 2014, the Milpitas City Council directed staff to conduct research in favor of public art in private development projects with an option for a new public art in lieu fee. That direction also included returning to City Council with a report and analysis regarding a public art in private development projects program. Consistent with that direction, staff is bringing this report and proposing an Ordinance for Planning Commission discussion and consideration and recommendation to the City Council.

PROJECT DESCRIPTION

Overview

Based on City Council Direction, staff has research the practice of requiring public art or public art in-lieu contribution for private development projects, by ordinance in other California and Bay Area cities. The ordinances reviewed all required private development projects to either incorporate various forms of art on site or pay an in-lieu contribution, each option valued at a percentage of project construction valuation. Most ordinances cite the following benefits of a public art for private development projects:

- Distinguish Milpitas as a place to live, play, work, and visit;
- Further enhance the aesthetic environment;
- Strengthen cultural awareness, creativity, and innovative thinking;
- Integrate art professionals into the design and planning process.

There are multiple mechanisms that would incorporate art as a component in private development.

Sample Ordinances

Staff surveyed other city art ordinances in developing a requirement for private development projects. Of the cities surveyed, the majority required private development projects that were either above a certain square footage or above a certain valuation to make a public art contribution. This contribution was either in the form of art located on the project site or as an in-lieu contribution to a city public art fund. Flexibility in the requirement, where the money in the fund was used by the City for public art projects is common in most ordinances.

Brea Example

Council Member Montano requested that staff evaluate the City of Brea Art in Public Places Plan (APPP). The Brea APPP requires developers to select and install permanent outdoor sculptures at their project sites. Projects with a valuation of $1.5 million to $3.9 million have the option of contributing sculptures or contributing in-lieu funds. Projects with a building valuation of more than $4.0 million are required to install sculptures onsite. Exemptions are provided for private residences of four or fewer dwelling units, places of worship, and public facilities. Developers are required to submit a sculpture application, which is reviewed and approved by an Art Advisory.

Public Art Ordinance Survey

City	Requirement	Value Contributed to Art	On-Site Art	In-Lieu Fee
Brea	$1.5 million - $3.9 million building valuation	1% building permit valuation	Sculpture incorporated into project or payment required	
	$4.0 million or more	1% building permit valuation	Select / purchase / install	
San Jose	Not Required Encouraged from Private Developers	1% of total estimated project costs	Select / purchase / install	
		0.6% of total estimated project costs		Payment Required
Oakland	Nonresidential – subject to design review and 2,000 sq ft or more	1% of permit valuation	Construct on-site or payment required to in-lieu fund	
	Residential – 20 units or more	0.5% of permit valuation		
Walnut Creek	25,000 sq ft or larger anywhere in city	1% building permit valuation		Payment Required
	15,000 sq ft – 24,999 sq ft in Core Area	0.5% building permit valuation		Payment Required
		Assessment greater than $25,000	Construct on project site or contribute to in-lieu fund	
Pasadena	$500,000	1% building permit valuation		
City of Fremont	Less than 100,000 sq ft	Fee determined by City Council – per sq ft		Payment Required
	More than 100,000 sq ft	Fee determined by City Council – per sq ft	50% of fee for art on site	50% into fund
Emeryville	Private Nonresidential - $300,000 building development costs	1% building permit valuation	Construct on project site or contribute to in-lieu fund	
	Private Residential – 20	0.5% building permit valuation	Construct on project site or contribute to in-lieu fund	

	or more units		

PROJECT ANALYSIS

Proposed Amendments

The proposed Zoning Ordinance amendment would create Section 14 in the Zoning Ordinance. The proposed changes are underlined and attached to the draft resolution as part of the Planning Commission packet.

An overview of the proposed Ordinance is provided below:

1. The public art requirement shall apply to private development projects that exceed the following thresholds:

    a. Nonresidential development projects with 2,000 square feet or more of new floor area.
    b. Residential development projects containing 20 or more units.

2. The amount of the public art requirement is as follows:

    a. Nonresidential projects: One percent (1%) of the building development costs; and
    b. Residential projects: One percent (1%) of the building development costs.

3. The City has the option of either requiring:

    a. Installation of publicly accessible art on the development site; or
    b. Payment of an in-lieu fee to the City's Public Art Fund for acquisition and placement of public art throughout the City.

4. The requirements, although encouraged for all development in the City of Milpitas, will not apply to an affordable housing development if the developer demonstrates to the satisfaction of the City that the requirements would cause the development project not to be economically feasible.

The proposed ordinance is modeled on the successful ordinances in the City of Oakland and Emeryville. The ordinance provides the City with the option of commissioning public art on the site of development or making an in-lieu contribution to the City's Public Art Fund. Deposits to the Public Art Fund may be used for acquisition and placement of public art throughout the city, reviewed by the City's Art Commission staff with recommendations to the City Council.

The proposed Ordinance will not apply to (a) building/construction related permits already issued and not yet expired; or (b) to zoning entitlements approved by the City and not yet

expired; or (c) to zoning applications deemed complete by the City as of the date of final adoption. However, zoning applications deemed complete by the City prior to the date of final adoption of this Ordinance may be processed under provisions of the proposed ordinance if the developer and/or owner choose to do so.

Compliance with the provisions of the proposed ordinance will be required by the developer at Building Permit application, as follows: (a) payment of the full amount of the Public Art in-lieu contribution, or (b) submittal of contractual agreement to commission or purchase and install approved artwork on the development site. In the case of installation of public art on the development site, the developer will maintain the artwork in proper condition on an ongoing basis.

The proposed Public Art for Private Development ordinance is an aesthetic requirement for most new development within the City of Milpitas. The proposed art and in-lieu contribution is an aesthetic requirement of most new development projects, and is not a development impact fee because it does not defray an impact created by new development, and therefore a nexus study is not required.

The Public Art for Private Development projects ordinance will result in an enhanced public art program and more public artwork throughout the City of Milpitas, improving and enhancing the overall aesthetic environment. Public art enhances civic pride and helps define the City's image to the public and visitors alike. This contributes to a sense of identity and place. It makes the City of Milpitas more livable and more visually stimulating, which creates a benefit to the public and enhance the quality of life.

FINDINGS

Pursuant to Section 57 of the Zoning Code, the Planning Commission is required to make specific Findings before recommending approval of a Zoning Amendment. Findings shall identify the rationale behind the decision to take a certain action. Each code-required Finding is analyzed below.

Zoning Text Amendment (Section XI-10-57.02.G.3)

1. *The proposed amendment is consistent with the General Plan.*

   The proposed Ordinance is consistent with and implements the City of Milpitas' General Plan. The Ordinance will enhance the quality of life for residents in the City by contributing architectural variety and design to the aesthetic environment. Public art enhances civic pride and helps define the City's image to the public and visitors alike. This contributes to a sense of identity and place. It makes the City of Milpitas more livable and more visually stimulating, which creates a benefit to the public and enhance the quality of life.

   The project is also consistent with the following General Plan Guiding Principles and Policies:

Guiding Principle 2.a-G-7 – When considering development proposals, seek "community benefit", such as upgrading infrastructure facilities, constructing new infrastructure facilities, and funding contributions to programs.

Implementing Policy 2.a-I-17 – Foster community pride and growth through beautification of existing and future development.

The addition of the Public Art for Private Development Ordinance is consistent with the General Plan because it constitutes a "community benefit" by upgrading the aesthetic environment of the City. The requirement for art work makes the City a more livable and visually stimulating place which ultimately benefits the community. Further, the Ordinance creates a sense of place and identity that fosters community and pride and growth through beautification of the existing and future development. For these reasons, the proposed Ordinance is consistent with the General Plan.

2. *The proposed amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.*

The proposed zoning amendment will result in a more aesthetically pleasing environment. Incorporating art work in private developments, and throughout the City, makes buildings and their grounds more welcoming, and it creates a deeper interaction with the places visited, and which citizens work and live. For these reasons, the public health, safety and welfare will be benefited by the proposed Ordinance.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed project is a project under CEQA.

Prior to adopting this Ordinance, the Planning Commission independently finds and determines that this action is exempt from CEQA (California Environmental Quality Act) pursuant to CEQA Guidelines sections 15060(c)(2), 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15262 (feasibility and planning studies), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

PUBLIC COMMENT/OUTREACH

The Zoning Ordinance requires that a community meeting be conducted prior to adoption of a new Ordinance. Staff plans to conduct a community meeting on March 16, 2015 to discuss the proposed Ordinance.

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public. The table below provides a summary of the City's public noticing efforts for this project.

Public Noticing Summary

Notice of Public Hearing	Agenda
▪ Public hearing notice posted in the Milpitas Post (*14 days prior to the hearing*) ▪ Posted on the City's official notice bulletin board (*10 days prior to the hearing*)	▪ Posted on the City's official notice bulletin board (*5 days prior to the hearing*) ▪ Posted on the City of Milpitas's Web site (*one week prior to the hearing*)

CITY COUNCIL REVIEW

This item is scheduled as a public hearing by the City Council on April 7, 2015.

CONCLUSION

Based on the analysis described above, adoption of the proposed ordinance will require or provide for the construction of public artwork on new development project sites. This requirement is triggered if a nonresidential project adds more than 2,000 square feet of building space or if a residential project exceeds 20 units. Both types of development proposals are required to contribute one percent (1%) to an in-lieu fund or have artwork placed onsite. This will cause public art to be dispersed and created throughout the City of Milpitas enhancing the visual environment and quality of life for visitors and residents.

The public art program is an aesthetic requirement. This policy is not a development fee because it does not defray an impact created by new development, and therefore a nexus study is not required.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the public hearing to receive comments;
2. Close public hearing;
3. Adopt Resolution No. 15-013 recommending the City Council adopt **Zoning Amendment No. ZA15-0001 to adopt a new Public Art Requirement for Private Development Projects, based on the above findings.**

ATTACHMENTS

A. Resolution No.15-013
    a. Exhibit A: Draft Ordinance

MEETING MINUTES

MILPITAS PLANNING COMMISSION
Milpitas City Hall, Council Chambers
455 E. Calaveras Blvd., Milpitas, CA

Wednesday, March 11, 2015

I. PLEDGE OF ALLEGIANCE

Chair Mandal called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

II. ROLL CALL/ SEATING OF ALTERNATE

Commissioners
Present: Chair Sudhir Mandal, Vice Chair Larry Ciardella, Commissioners Gurdev Sandhu, Rajeev Madnawat, Hon Lien, Ray Maglalang, Alternate Member Zeya Mohsin

Absent: Commissioner Morris

Staff: Steven McHarris, Johnny Phan, Adam Petersen

III. PUBLIC FORUM

Chair Mandal invited members of the audience to address the Commission and there were no speakers.

IV. APPROVAL OF MEETING MINUTES

Chair Mandal called for approval of the February 25, 2015 meeting minutes of the Planning Commission.

Motion to approve Planning Commission meeting minutes as submitted.

Motion/Second: Vice Chair Ciardella/Commissioner Madnawat

AYES: 7

NOES: 0

ABSTAIN: 0

V. ANNOUNCEMENTS

Commissioner Maglalang attended the League of California Cities 2015 Planning Commissioners Academy and said AB1234 Ethics training was provided and he learned a lot at the conference, which covered many topics including affordable and inclusionary housing, and municipal budget and finance. He then distributed his notes from the conference to the commissioners.

Commissioner Lien said she will put notes together and share them with the commissioners. She added that a similar training will be held in San Jose from September 30 – October 2nd. She and Commissioner Maglalang recommend the other commissioners attend.

Chair Mandal said he received a notice of acquisition from the Milpitas Unified School District stating they are in the process of acquiring 2.7 additional acres adjoining the McCandless property.

VI. CONFLICT OF INTEREST

Assistant City Attorney Johnny Phan asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.

There were no reported conflicts.

VII. APPROVAL OF AGENDA

Chair Mandal asked if staff or Commissioners had changes to the agenda and there were none.

Motion to approve the March 11, 2015 agenda as submitted.

Motion/Second: Commissioner Madnawat/Commissioner Mohsin

AYES: 7

NOES: 0

VIII. CONSENT CALENDAR

No Items

IX. PUBLIC HEARING

IX-1 **PUBLIC ART – Citywide –** The City of Milpitas is considering introducing a Public Art Ordinance. The proposed ordinance would charge certain development projects an in-lieu fee or has the potential to give applicants an option of constructing public art as part of the development proposal.

Project Planner Adam Petersen reviewed a PowerPoint presentation discussing public art projects and sample ordinances.

Vice Chair Ciardella asked if benches can be considered public art and Mr. Petersen said a bench art piece can be considered public art.

Commissioner Madnawat questioned art that may cost just $1,000 and wondered who will decide what appropriate art is and Mr. Petersen said art proposals will be reviewed as part of site development permits. Commissioner Madnawat said staff is not an authority on determining what art is and said he proposes an amendment assuring that public art be reviewed by the Arts Commission.

Commissioner Madnawat asked why staff believes it is not a fee if someone does not want to install art and Mr. Petersen said it is an aesthetic requirement similar to architectural review. Commissioner Madnawat said if the ultimate goal is to have art around the city, why not remove that condition and install art, and questioned why there is an interest in getting money and how it will be spent. Mr. Petersen said the money contributed to the public art in lieu fund would be available for installing art throughout the city.

Commissioner Madnawat said every other city has had this policy for a long time and this is a good move for Milpitas.

Commissioner Maglalang feels 1% of the value of a project is a high amount when it is a large development and said there should be a cap on the amount. Mr. Petersen replied that other cities' ordinances surveyed do not include a cap.

Mr. McHarris said staff reviewed the art ordinance in a number of cities and did not see a cap applied to large projects. Art may be distributed over a large project and would not appear significant. He added that staff is not recommending placing a cap on the fee.

Commissioner Maglalang asked if projects under construction will be affected by this ordinance and Mr. Petersen said they will not be affected.

Vice Chair Ciardella feels there should be a cap, as the amount on some projects seems excessive.

Chair Mandal likes the concept and feels it should have come sooner. Mr. Petersen said there is a lot of build out in the TASP area and opportunities for future projects and public art especially in the Midtown Specific Plan.

Chair Mandal opened the public hearing and there were no speakers.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Vice Chair Ciardella

AYES: 7

NOES: 0

Chair Mandal feels the Arts Commission should have a decision on the art that is selected, and he is not in favor of placing a cap on the fees.

Commissioner Madnawat wanted to make a motion with the addition of two conditions: 1) the Art Commission will review a proposed public art project for its artistic value and appropriateness in light of the size of the development project, and 2) the cost of the art project will not be the sole reason for rejecting the art project.

Motion to adopt Resolution No. 15-013 recommending the City Council adopt Zoning Amendment No. ZA15-0001 to amend the Zoning Code to add new provisions relating to Public Art Requirements for Private Development Projects, with the addition of two conditions: 1) the Art Commission will review a proposed public art project for its artistic value and appropriateness in light of the size of the development project, and 2) the cost of the art project will not be the sole reason for rejecting the art project.

Motion/Second: Commissioner Madnawat/Commissioner Mohsin

AYES: 6

NOES: 1 Ciardella

X. NEW BUSINESS

No Items

XI. ADJOURNMENT

The meeting was adjourned at 7:40 PM to the next meeting scheduled on Wednesday, March 25, 2015.

Motion to adjourn to the next meeting.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

Meeting Minutes submitted by
Planning Secretary Elia Escobar

RESOLUTION NO. 15-013

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THE CITY COUNCIL TO ADOPT ZONING AMENDMENT NO. 15-0001 TO INTRODUCE AN ORDINANCE RELATING TO PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT PROJECTS

WHEREAS, on February 14, 2015, an application was submitted by the City of Milpitas Planning and Neighborhood Services Department to amend the Milpitas Zoning Code to adopt provisions relating to Public Art for Private Development Projects; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA) and recommends that the Planning Commission determine this project will not have a significant effect on the environment; and

WHEREAS, on March 11, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

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

SECTION 1: The Planning Commission 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 Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2: The Planning Commission has reviewed and exercised its independent judgment on the environmental review for the Zoning Amendment to adopt provisions relating to Public Art for Private Development projects to the Zoning Code, in accordance with the requirements of the CEQA, and State and local guidelines implementing CEQA, and determined that the Zoning Amendment will not have a significant effect on the environment under CEQA and State and local guidelines implementing CEQA. The Zoning Amendment is not subject to further CEQA review since the Zoning Text Amendment is covered by the general rule that CEQA applies only to projects, which have the potential for causing significant effect on the environment. It can be seen with certainty that that there is no possibility that the amendment in question may have a significant impact on the environment because the proposed amendment will not expand the range of uses permitted in the Zoning Code, nor will it increase the development intensity of uses authorized in the Zoning Code. The proposed amendment simply creates aesthetic requirements for private development projects and does not authorize the construction of any individual project. Subsequent development applications will require further analysis by the City in order to determine the potential impacts from development. Therefore, the proposed action qualifies for this exemption and no further environmental review is required.

SECTION 3: ***Zoning Text Amendment (Section XI-10-57.02.G.3)***

1. *The proposed amendment is consistent with the General Plan.*

The proposed Ordinance is consistent with and implements the City of Milpitas' General Plan. The Ordinance will enhance the quality of life for residents in the City by contributing architectural variety and design to the aesthetic environment. Public art enhances civic pride and helps define the City's image to the public and visitors alike. This contributes to a sense of identity and place. It makes the City of Milpitas more livable and more visually stimulating, which creates a benefit to the public and enhance the quality of life.

The project is also consistent with the following General Plan Guiding Principles and Policies:

> **Guiding Principle 2.a-G-7** – When considering development proposals, seek "community benefit", such as upgrading infrastructure facilities, constructing new infrastructure facilities, and funding contributions to programs.
>
> **Implementing Policy 2.a-I-17** – Foster community pride and growth through beautification of existing and future development.

The addition of the Public Art for Private Development Ordinance is consistent with the General Plan because it constitutes a "community benefit" by upgrading the aesthetic environment of the City. The requirement for art work makes the City a more livable and visually stimulating place which ultimately benefits the community. Further, the Ordinance creates a sense of place and identity that fosters community and pride and growth through beautification of the existing and future development. For these reasons, the proposed Ordinance is consistent with the General Plan.

2. *The proposed amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.*

The proposed zoning amendment will result in a more aesthetically pleasing environment. Incorporating art work in private developments, and throughout the City, makes buildings and their grounds more welcoming, and it creates a deeper interaction with the places visited, and which citizens work and live. For these reasons, the public health, safety and welfare will be benefited by the proposed Ordinance.

SECTION 4: The Planning Commission of the City of Milpitas hereby adopts this Resolution No. 15-013 recommending the City Council adopt Zoning Amendment No. ZA15-0001 to amend the Zoning Code to add provisions relating to Public Art for Private Development projects, subject to the findings herein. A copy of the proposed Ordinance is attached to this Resolution for reference.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Milpitas on March 11, 2015.

Sudhir Mandal
Chair

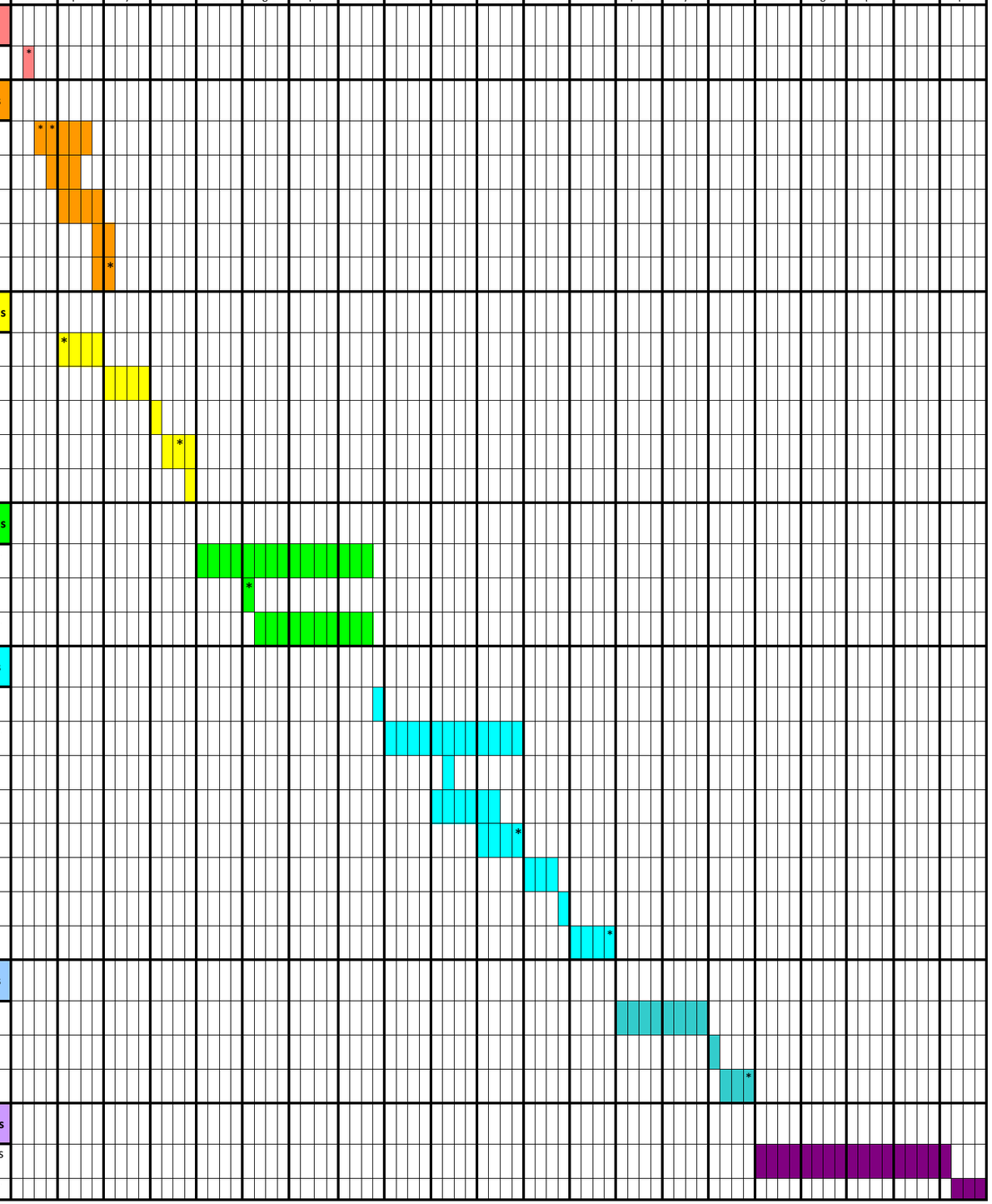
TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on March 11, 2015 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal	✓			
Larry Ciardella		✓		
Hon Lien	✓			
Demetress Morris			✓	
Rajeev Mandnawat	✓			
Gurdev Sandhu	✓			
Ray Maglalang	✓			
Zeya Mohsin (alternate)	✓			

City of Milpitas Competitive Procurement Process Master Schedule - Single RFP

Task No.	Description	Approx. Duration
COUNCIL APPROVAL OF PROCESS		**1 day**
n.a.	City Council Approval to Commence Competitive Procurement Process (03/17/15)	1 day
PHASE 1 - DEFINE PROCESS AND FUTURE SERVICES		**2 months**
1.1	Review Current Conditions	4 weeks
1.2	Conduct Public Outreach Activities	4 weeks
1.3	Finalize Future Services and Contract Terms	4 weeks
1.4	Document Desired Scope of Services and Business Terms	2 weeks
1.5	Obtain Council Approval, Council Study Session	2 weeks
PHASE 2 - PREPARE RFP AND AGREEMENT		**2.5 months**
2.1	Prepare Draft RFP (including Agreement)	4 weeks
2.2	Prepare Final RFP	4 weeks
2.3	Prepare City Council Report	1 week
2.4	Present Final RFP to Council for Approval	2 weeks
2.5	Issue RFP to Interested Companies	1 day
PHASE 3 - MANAGE PROPOSAL PROCESS		**3.5 months**
3.1	Proposers Prepare Proposals	15 weeks
3.2	Conduct Pre-Proposal Meeting	1 day
3.3	Respond to Pre-Proposal Questions (as needed)	10 weeks
PHASE 4 - CONTRACTOR SELECTION		**5 months**
4.1	Proposers Submit Proposals	---
4.2	Evaluate Proposals	12 weeks
4.3	Interview Proposers	1 week
4.4	Public Outreach (meetings, surveys)	6 weeks
4.5	Present Proposals to Council	4 weeks
4.6	Identify Recommended Contractor	3 weeks
4.7	Prepare City Council Report	1 week
4.8	Present Recommended Contractor to Council	4 weeks
PHASE 5 - CONTRACT NEGOTIATIONS		**3 months**
5.1	Negotiate Contract *(Option: performing negotiations during the interview process)*	8 weeks
5.2	Prepare City Council Report	1 week
5.3	Present Signed Contract to Council	4 weeks
PHASE 6 - CONTRACTOR IMPLEMENTATION		**14 months**
6.1	Contractor Implementation Process	14 months
6.2	Contractor Commences Service	9/6/2017



*7

City Clerk's Office
MAR 12 2015
RECEIVED

City of Milpitas
Donation or Fee Waiver/Reduction Request Application Form for Non-Profit Organizations

Complete this form and return it to Milpitas City Clerk

Please provide a copy of the IRS tax-exempt letter with the application.

Name of Organization: OUR LADY of GUADALUPE CLUB ST JOHN THE BAPTIST CHURCH

Is there a Milpitas branch or affiliation? _____

Mailing Address: 330 BOYD ST MILPITAS, CA 95035

Contact Person: RUBEN ESQUERRA Telephone No. 408 262-6009

Email Address: dannyesquerra@yahoo.com

What is your request? Donation Amount Requested _____ OR

~~Fee~~ Requested to be waived (type and $ amount) $800.00-MILPITAS COMMUNITY CENTER-MCE AUDITORIUM

Event date(s): MAY 9, 2015 - SATURDAY 10AM TO 3PM

What is the purpose of the event? MOTHERS DAY EVENT

How will the Milpitas community benefit from this event? PROMOTING CULTURAL DIVERSITY of the PERFORMING ART, AND FREE TO THE PUBLIC

What % of the fund raising proceeds will benefit Milpitas community? _____

How will the City's contribution (if granted) be recognized in any publicity? AN ACKNOWLEDGING CITIES CONTRIBUTION

Within 60 days after completion of the event for which a donation was received or a fee waiver/ reduction was granted by the City of Milpitas, your organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Signature of Officer: Ruben Esquerra Date: 3-12-15

Print Name & Title: RUBEN ESQUERRA - PRESIDENT

Free – Open to the Public!

You are cordially invited to the Second Annual

Pre-Mother's Day Event
Dia de Las Madres!

May 9, 2015
10:00 am to 3:00 pm

Milpitas Community Center
457 E. Calaveras Blvd

Live entertainment; Mariachis, Folklorico dancers, guest singers

Hosted by:
Milpitas City Councilwoman
Carmen Montano

Permit Contract

Milpitas Recreation
457 E. Calaveras Blvd.
Milpitas, CA 95035
Phone: (408) 586-3210
FAX: (408) 586-3295
Email: --

Permit #17394, Approved
Jan 20, 2015 4:37 PM

MILPITAS Recreation Services

Ruben Esguerra
330 Boyd St.
Milpitas, CA 95035
Email:

Customer Type: Customer
Prepared By: Justin Yount

Customer ID: 88394
Work: -- Home: (408) 945-1451

Charges	Taxes	Discounts	Total Charges	Deposits	Deposit Taxes	Total Payments	Refunds	Balance
$800.00	$0	$0	$800.00	$520.00	$0	($520.00)	$0	$800.00

RESERVATIONS

Event	Resource	Center	Notes
Mother's Day Celebration Type: Private Rental Attend/Qty: 300	MCC Auditorium	Milpitas Community Center 457 E Calaveras Blvd Milpitas, Ca 95035 (408) 586-3210	--

Days Requested		Event Begins	Duration	Event Ends
Day	Date			
Saturday	May 9, 2015	10:00 AM	5 hours	May 9, 2015 at 3:00 PM

Summary	Notes
Total Number of Dates: 1 Total Time: 5 hours	--

CHARGES

Description	Event / Resource	Unit Fee	Units	Tax	Charge
Hourly Rental Fee-Resident	Mother's Day Celebration #17394 MCC Auditorium	$160.00	5.00	--	$800.00

DEPOSITS

Deposit Charge	Event / Resource	Charge	Tax	Amount paid	Refunds	Balance
Application Fee	Mother's Day Celebration #17394 MCC Auditorium	$20.00	$0	$20.00	$0	$0
Rental Deposit	Mother's Day Celebration #17394 MCC Auditorium	$500.00	$0	$500.00	$0	$0

Payments and Refunds

Receipt #	Date	Charge Description	Resource Event	Payment
1094701.002	Feb 6, 2015	Application Fee	MCC Auditorium Mother's Day Celebration #17394	$20.00
1094701.002	Feb 6, 2015	Rental Deposit	MCC Auditorium Mother's Day Celebration #17394	$500.00

Payment Schedule for Original Balance of $1,320.00

Due Date	Amount Due	Amount Paid	Withdrawal Adjustment	Balance
Apr 9, 2015	$1,320.00	$520.00	$0	$800.00
			Current Balance	$800.00

DISCLAIMERS

The BALANCE OF YOUR FEES and a ROOM DIAGRAM must be submitted at least 30 days prior to your rental. Fees may be paid in the form of cash, cashier's check, money order or credit card during our normal business hours. (no personal checks are accepted).

CUSTOM QUESTIONS

Question	Answer
Will you be serving alcohol?	No
Will you be selling alcohol?	No

WAIVERS

Rental Waiver
Waiver for:Ruben Esguerra
Due Date: May 9, 2015

I, the applicant, have reviewed this permit and agree that the information is accurate and correct.

Waiver Signed by:Ruben Esguerra on Jan 20, 2015

Signature: _____

Thank you for renting a Milpitas Recreation Services' facility!

This paperwork and the Named Applicant are required for entry into the permitted facility. Entry time is the time listed on the paperwork. If there are facility issues on the day of your event, contact the facility staff on site.

Park Rentals: Please arrive early to make sure the proper signage is placed on the picnic tabletops. If there are park issues on the day of your event, please contact the Milpitas Police Department at 408-586-2400.

Internal Revenue Service

89243808

If you inquire about your account, please refer to this number or attach a copy of this notice ▶

Date of This Notice
05-05-81

Employer Identification Number
94-2734503

ROMAN CATHOLIC BISHOP OF THE SAN JOSE A CORPORATION SOLE
~~7600 Y ST JOSEPH AVE~~
LOS ALTOS CA 94022

575 B 045555555W
55555555

NOTICE OF NEW EMPLOYER IDENTIFICATION NUMBER ASSIGNED

Thank you for your application for an employer identification number. The number above has been assigned to you. We will use it to identify your business tax returns and any other related documents, even if you have no employees.

Please keep this number in your permanent records. Use the number and your name, exactly as shown above, on all Federal tax forms that require this information, and refer to the number in all tax payments and in tax-related correspondence or documents. You may wish to make a record of the number for reference in case this notice is lost or destroyed.

Note that the assignment of this number does not grant tax-exempt status to nonprofit organizations. For details on how to apply for this exemption, see IRS Publication 557, How to Apply for and Retain Exempt Status for Your Organization, available at any IRS office.

We appreciate your cooperation.

Form 5372 (Rev 2-80)

RESOLUTION NO. _____

A RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY COUNCIL OF THE CITY OF MILPITAS

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedure to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

> To provide Section 20516 (Employees Sharing Additional Cost) of 3% for local fire members in the International Association of Firefighters Local Union 1699.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milpitas does hereby give notice of intention to approve an amendment to the contract between the City of Milpitas and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment is attached, as an "Exhibit" hereto and by this reference made a part hereof.

PASSED AND ADOPTED this _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mary Lavelle, City Clerk

APPROVED:

Jose Esteves, Mayor

APPROVED AS TO FORM:

Mike Ogaz, City Attorney

CalPERS

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Milpitas

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1962, and witnessed June 15, 1962, and as amended effective March 1, 1963, April 1, 1973, September 28, 1973, January 1, 1974, July 1, 1976, July 1, 1980, May 13, 1984, May 21, 1989, April 22, 1990, July 6, 1990, October 4, 1992, September 17, 1993, December 6, 1996, May 8, 1998, July 18, 1999, July 16, 2000, June 2, 2002, October 6, 2002, October 15, 2006, June 24, 2007, October 9, 2011 and April 8, 2012 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective April 8, 2012, and hereby replaced by the following paragraphs numbered 1 through 17 inclusive:

1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members entering membership in the miscellaneous classification on or prior to October 9, 2011, age 60 for local miscellaneous members entering membership for the first time in the miscellaneous classification after October 9, 2011, age 50 for local safety members entering membership in the safety classification on or prior to April 8, 2012 and age 55 for local safety members entering membership for the first time in the safety classification after April 8, 2012.

ASE DO NOT SIGN "EXHIBIT ONLY"

2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1962 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.

3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:

   (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.

   (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas

   (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.

4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
   a. Local Fire Fighters (herein referred to as local safety members);

   b. Local Police Officers (herein referred to as local safety members);

   c. Employees other than local safety members (herein referred to as local miscellaneous members).

PLEASE DO NOT SIGN "EXHIBIT ONLY"

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

NO ADDITIONAL EXCLUSIONS

6. Public Agency and the Milpitas Fire Protection District have agreed to a merger of their contracts, and this contract shall be a continuation of the benefits of the contract of the Milpitas Fire Protection District, pursuant to Section 20567.5 of the Government Code. Such merger is effective as of July 1, 1962. Legislation repealed said Section effective January 1, 1988.

7. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment before and not on or after June 2, 2002 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to December 31, 1972, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).

8. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment on or after June 2, 2002 and not entering membership for the first time in the miscellaneous classification after October 9, 2011 shall be determined in accordance with Section 21354.5 of said Retirement Law, subject to the reduction provided therein for service prior to December 31, 1972, termination of Social Security, for members whose service has been included in Federal Social Security (2.7% at age 55 Full and Modified).

9. The percentage of the final compensation to be provided for each year of credited current service as a local miscellaneous member entering membership for the first time in the miscellaneous classification after October 9, 2011 shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).

10. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member entering membership in the safety classification on or prior to April 8, 2012 shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).

11. The percentage of final compensation to be provided for each year of credited current service as a local safety member entering membership for the first time in the safety classification after April 8, 2012 shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).

PLEASE DO NOT SIGN "EXHIBIT ONLY"

12. Public Agency elected and elects to be subject to the following optional provisions:

a. Section 21573 (Third Level of 1959 Survivor Benefits) for local miscellaneous members and local fire members only.

b. Section 20425 ("Local Police Officer" shall include employees of a police department who were employed to perform identification or communication duties on August 4, 1972 and who elected to be local safety members).

c. Section 20042 (One-Year Final Compensation) for local safety members and those local miscellaneous members entering membership on or prior to October 9, 2011.

d. Section 20965 (Credit for Unused Sick Leave).

e. Section 21024 (Military Service Credit as Public Service).

f. Section 20434 ("Local Fire Fighter" shall include any officer or employee of a fire department employed to perform firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation services as described in Government Code Section 20434).

g. Section 20903 (Two Years Additional Service Credit).

h. Section 21427 (Improved Nonindustrial Disability Allowance) for local police members only.

i. Section 21548 (Pre-Retirement Option 2W Death Benefit) for local police members only.

j. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local police members only.

k. Section 21547.7 (Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service).

l. Section 20475 (Different Level of Benefits). Section 21353 (2% @ 60 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after October 9, 2011.

Section 21363.1 (3% @ 55 Full formula) is applicable to local safety members entering membership for the first time in the safety classification after April 8, 2012.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

m. Section 20516 (Employees Sharing Additional Cost):

From and after the effective date of this amendment to contract, 3% for local fire members in the International Association of Firefighters Local Union 1699.

13. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on July 1, 1976. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.

14. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.

15. Public Agency shall also contribute to said Retirement System as follows:

a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local fire members.

b. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local police members.

c. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.

d. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

16. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

17. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY_____
RENEE OSTRANDER,
ASSISTANT DIVISION CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MILPITAS

BY_____
PRESIDING OFFICER

_____
Witness Date

Attest:

_____
Clerk

PLEASE DO NOT SIGN "EXHIBIT ONLY"

REGULAR

NUMBER: 101.23

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF MILPITAS AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1.

An amendment to the contract between the City Council of the City of Milpitas and the Board of Administration, California Public Employee's Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked "Exhibit," and by such reference made a part hereof as though herein set out in full.

SECTION 2.

The Mayor of the City Council of the City of Milpitas is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City Council of the City of Milpitas.

SECTION 3.

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 *9

NUMBER: **38.820**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE PROHIBITING ALL NEW RESIDENTIAL USES IN THE TOWN CENTER ZONING DISTRICT**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of March 17, 2015, upon motion by Council Member Barbadillo 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:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

RECITALS:

WHEREAS, Title XI, Chapter 10, Section 5 entitled "Commercial Zones and Standards" of the Milpitas Municipal Code sets forth the permitted, conditionally permitted, and prohibited uses in the Town Center Zoning district; and

WHEREAS, on January 14, 2015, the Planning Commission conducted a duly noticed public meeting and adopted Resolution No. 15-001 recommending the City Council amend the Milpitas Zoning Code to add "mixed use" residential to the Town Center Zoning description and to prohibit ground floor residential uses in the Town Center zone; and

WHEREAS, on February 3, 2015, the City Council conducted a duly noticed public hearing to consider the recommendation from the Planning Commission to add "mixed use" residential to the Town Center Zoning description and to prohibit ground floor residential uses in the Town Center zone; and

WHEREAS, during the City Council meeting on February 3, 2015, the City Council expressed a desire to make the Town Center a distinct commercial district and directed staff to bring forward a General Plan Amendment and Zoning Code Amendment to prohibit new residential development of any type in the Town Center; and

WHEREAS, on February 25, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties and adopted a resolution by a 6-1 vote that the City Council approve a General Plan amendment and Zoning Code amendment to prohibit all new residential uses in the Town Center; and

WHEREAS, on March 17, 2015, the City Council conducted a duly noticed public hearing to consider the recommendation from the Planning Commission to prohibit all new residential uses in the Town Center.

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. FINDINGS

Zoning Text Amendment (Section XI-10-57.02(G)) - The City Council makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA14-0011:

1. *The proposed Amendment is consistent with the General Plan.*

   Prohibiting new residential uses and encouraging more commercial development meets the intent of the Town Center designation. The Town Center Zoning District is intended as the functional and visual focus of Milpitas while providing a meeting and market place for commercial, professional and entertainment uses. Prohibiting new residential uses will ensure land is available for the continued focus of a commercial district that provides identity for the City while allowing the surrounding residential development to support the commercial uses.

   The project is also consistent with the following General Plan Guiding Principles and Policies:

   Guiding Principle 2.a-G-2 – Maintain a relatively compact urban form.

   Guiding Principle 2.a-G-4 – The Town Center will be the "heart" of Milpitas' civic, cultural, business and professional life.

Guiding Principle 2.a-G-10 – Consider long term planning and strong land use policy in managing the City's fiscal position.

The modification of the Town Center use table is consistent with the General Plan because it furthers the identified principles and policy by using land more efficiently and will allow for additional commercial and other tax-generating uses at the street level, thereby strengthening the City's fiscal position while achieving a commercial district in the heart of Milpitas.

2. *The proposed Amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.*

The proposed Zoning Code Amendment will result in a more efficient use of land. The land use regulations will not affect the range of uses permitted or conditionally permitted. Commercial uses already allowed in the Town Center zone will continue to be allowed. Similarly, previously approved permitted and conditionally permitted residential uses will continue to be allowed. Therefore, the general well-being of Milpitas residents will be maintained since the Town Center zone will still facilitate a broad range of land uses, but will encourage more commercial development to provide economic opportunities for the City and residents.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Section XI-10-5.01.E entitled "Purpose and Intent" of the Milpitas Municipal Code is hereby amended to read as follows:

Town Center (TC) Zone. The purpose and intent of this zone is to provide for an area that supports a wide range of administrative, business, entertainment, dining, and cultural activities in the geographic center of the City to suit the varying lifestyles of residents and visitors alike. The area is easily accessible via the City's transportation network.

Section XI-10-5.02.B entitled "Prohibited Uses" of the Milpitas Municipal Code is hereby amended to read as follows:

Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol "NP" appears within Table 5.02-1.
2. Uses that have been excluded from Table 5.02-1, unless they are found by the City to be similar to permitted or conditionally permitted uses in accordance with C below.
3. Any residential uses in the Town Center Zone shall strictly be prohibited provided residential uses constructed on or before February 17, 2015 or any project securing an approved tentative map or site development permit for construction of residential uses on or before February 17, 2015 shall be exempt from this prohibition and Milpitas Zoning Code Section 56, Nonconforming Buildings and Uses.

Table XI-10-5.02-1 entitled "Commercial Zone Uses" of the Milpitas Municipal Code is amended to read as follows:

Table XI-10-5.02-1
Commercial Zone Uses

Use	CO	C1	C2	HS	TC
1. Commercial Uses					
Alcoholic beverage sales	C[6]	C	C	NP	C
Art/photography studio or gallery	NP	P	P	P	P
Bookstore	NP	P	P	P	P
Commercial services[1]	P	P	P	NP	P
Funeral home or mortician	NP	NP	C	C	NP

Furniture sales	NP	P	P	P	P
Grocery store (supermarkets)					
Within 1,000 ft. of residential zone	NP	C	C	C	C
Not within 1,000 ft. of residential zone	NP	P	P	P	P
Head/smoke/tobacco shop	NP	C	C	NP	C
Home improvement (hardware, blinds, interior decorating, etc.)	NP	P	P	C	P
Not fully enclosed operation	NP	C	C	C	C
Household appliance store[7]	NP	NP	P	P	NP
Small appliance repair	NP	NP	MCS	P	NP
Large appliance repair	NP	NP	NP	P	NP
Janitorial services	NP	NP	P	P	NP
Newsstand					
Indoor	P	P	P	NP	P
Outdoor	C	C	C	NP	C
Nursery (flower or plant)					
Indoor	NP	NP	P[2]	P	P
Outdoor	NP	NP	C	P	NP
Office supply sales (stationary, equipment)	P	P	P	P	P
Paint and wallpaper stores	NP	NP	P	P	P
Pawnshops	NP	NP	C	NP	NP
Pet stores	NP	NP	P	P	P
Printing (newspaper, publishing)	NP	NP	P	P	P
Rentals (medical supplies, costumes, party equipment, office equipment)	NP	NP	P	P	P
Retail stores, general merchandise	NP	P	P	NP	P
Tanning salon	NP	NP	P	NP	P
Thrift store[3]	NP	C	P	P	P
2. Entertainment and Recreation					
Adult business[4]	NP	NP	NP	P	NP

Bowling alley	NP	NP	P	P	P
Commercial athletic facilities					
Indoor	NP	C	P	P	P
Outdoor	NP	NP	NP	C	NP
Motion picture theater (See 7 below)					
Recreation or entertainment facility	NP	C	C	C	C
Shooting range, indoor	NP	NP	NP	C	NP
3. Health and Veterinarian Uses					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C
Kennel	NP	NP	C	NP	NP
Massage establishment	NP	NP	C	C	C
Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	C	C	C
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P
4. Industrial Uses[5]					
Assembly from pre-processed materials	NP	NP	C	NP	NP
Commercial fueling facility	NP	NP	NP	C	NP
Commercial laboratory	NP	NP	C	P	NP
Contractor's yards and offices	NP	NP	C	C	NP
Disinfection and extermination business	NP	NP	C	P	NP
Dry cleaning plant	NP	NP	NP	P	NP
Food storage locker	NP	NP	NP	P	NP
Landscape contractor	NP	NP	C	P	NP

Lumberyards	NP	NP	C	C	NP
Mini-storage complex	NP	NP	C	C	NP
Plumbing, metalworking, glassworking or woodworking	NP	NP	C	C	NP
Research & development	NP	NP	C	NP	NP
Sign sales and fabrication (Electric and neon sign, sign painting)	NP	NP	C	P	NP
Warehousing and wholesale	NP	NP	C	NP	NP
5. Lodging					
Hotel and motel	NP	NP	C	C	C
6. Professional Offices, Financial Institutions and Related Uses					
Automatic teller machines (freestanding)[6]	NP	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P
General offices (administrative and business services, real estate, travel agencies, etc.)	P	P	P	P	P
7. Public, Quasi-Public and Assembly Uses					
Auction hall	NP	NP	C	C	C
Child care					
Child care center	C	C	C	C	C
Day care school	C	C	C	C	C
Large family child care home	NP	NP	NP	NP	C
Small family child care home	NP	NP	NP	NP	C
Club or social organization, religious assembly	C	C	C	C	C
Cultural center	NP	NP	C	C	C
Educational institutions					
Schools, private (elementary, middle, high)	NP	NP	C	NP	C
Trade and vocational school	C	NP	P	P	C
Farmer's market (not including flea market)	NP	C	C	C	C
Instruction					
Group[8]	MCS	MCS	MCS	MCS	MCS

Private	P	P	P	P	P
Motion picture theater					
Indoor	NP	C	C	C	C
Outdoor	NP	NP	NP	C	NP
Parking facility, storage garage	NP	P	P	C	C
Public utilities	C	C	C	C	C
Transportation facility (taxi, limousine, etc.)	NP	NP	C	C	C
8. Restaurants or Food Service					
Banquet hall	NP	NP	C	C	C
Bar or nightclub	NP	NP	C	C	C
Catering establishment	NP	NP	P	P	P
Restaurants	C[7]	P	P	P	P
With live entertainment/dancing	NP	NP	C	C	C
With drive-in or drive-through	NP	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	NP	MC	PMC	MC	MC
9. Residential Uses					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Emergency shelters[9]	NP	NP	NP	P/C	NP
Single-room occupancy residences[10]	NP	NP	NP	C	NP
10. Vehicle Related Uses					
Auto repair (tire, oil change, smog check, etc.)	NP	NP	C	C	NP
Auto sales and rental, outdoor (new and used cars, RV and truck)	NP	NP	C	C	NP
Auto broker (wholesale, no vehicles on site)	MCS	MCS	MCS	MCS	MCS
Car wash	NP	NP	C	C	NP
Service stations (with or without repair or retail)[11]	C	C	C	C	C
Drive through uses (restaurants, pharmacies, etc.)	NP	C	C	C	C
11. Unclassified Uses					
Accessory structures[12]	P	P	P	P	P

Model home complex[13]	NP	NP	NP	NP	P
Mortuary or crematory	NP	NP	NP	C	NP
Radio or television station	NP	NP	C	P	NP
Temporary seasonal sales[14]	NP	P	P	P	P

[1] Refer to the definition for "Commercial Services" in Section 2, Definitions, of this Chapter.

[2] Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.

[3]Refer to XI-10-5.04, Commercial Zone Special Development Standards, of this Chapter.

[4] In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.

[5] For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.

[6] Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

[7] When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.

[8] Refer to Subsection 5.02-1, Commercial Zone Special Uses, of this Section.

[9]Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.

[10] Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.

[11] Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

[12] Not including warehouses on the same site as the permitted use.

[13] No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.

[14] Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.

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.

*10

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS REQUESTING OF THE METROPOLITAN TRANSPORTATION COMMISSION THE ALLOCATION OF FISCAL YEAR 2015/2016 TRANSPORTATION DEVELOPMENT ACT ARTICLE 3 PEDESTRIAN/BICYCLE PROJECT FUNDING

WHEREAS, Article 3 of the Transportation Development Act (TDA), Public Utilities Code (PUC) Section 99200 *et seq*., authorizes the submission of claims to a regional transportation planning agency for the funding of projects exclusively for the benefit and/or use of pedestrians and bicyclists; and

WHEREAS, the Metropolitan Transportation Commission (MTC), as the regional transportation planning agency for the San Francisco Bay region, has adopted MTC Resolution No.4108, entitled "Transportation Development Act, Article 3, Pedestrian and Bicycle Projects," which delineates procedures and criteria for submission of requests for the allocation of "TDA Article 3" funding; and

WHEREAS, MTC Resolution No. 4108 requires that requests for the allocation of TDA Article 3 funding be submitted as part of a single, countywide coordinated claim from each county in the San Francisco Bay region; and

WHEREAS, the City of Milpitas desires to submit a request to MTC for the allocation of TDA Article 3 funds to support the projects described in Attachment B to this Resolution, which are for the exclusive benefit and/or use of pedestrians and/or bicyclists; now, therefore, be it

RESOLVED, that the City of Milpitas declares it is eligible to request an allocation of TDA Article 3 funds pursuant to Section 99234 of the Public Utilities Code, and furthermore, be it

RESOLVED, that there is no pending or threatened litigation that might adversely affect the project or projects described in Attachment B to this Resolution, or that might impair the ability of the **City of Milpitas** to carry out the project; and furthermore, be it

RESOLVED, that the project has been reviewed by the Bicycle Advisory Committee (BAC) of City of Milpitas if City of Milpitas has been approved by MTC to use the countywide BAC; and furthermore, be it

RESOLVED, that the City of Milpitas attests to the accuracy of and approves the statements in Attachment A to this Resolution; and furthermore, be it

RESOLVED, that a certified copy of this Resolution and its attachments, and any accompanying supporting materials shall be forwarded to the congestion management agency, countywide transportation planning agency, or county association of governments, as the case may be, of Santa Clara

County for submission to MTC as part of the countywide coordinated TDA Article 3 claim.

PASSED AND ADOPTED this _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

Attachment A

Re: Request to the Metropolitan Transportation Commission for the Allocation of Fiscal Year 2015/2016 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding

Findings

1. That the **City of Milpitas** is not legally impeded from submitting a request to the Metropolitan Transportation Commission for the allocation of Transportation Development Act (TDA) Article 3 funds, nor is the **City of Milpitas** legally impeded from undertaking the project(s) described in Attachment B of this Resolution.
2. That the **City of Milpitas** has committed adequate staffing resources to complete the project(s) described in Attachment B.
3. A review of the project(s) described in Attachment B has resulted in the consideration of all pertinent matters, including those related to environmental and right-of-way permits and clearances, attendant to the successful completion of the project(s).
4. Issues attendant to securing environmental and right-of-way permits and clearances for the projects described in Attachment B have been reviewed and will be concluded in a manner and on a schedule that will not jeopardize the deadline for the use of the TDA funds being requested.
5. That the project(s) described in Attachment B comply with the requirements of the California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 et seq.).
6. That as portrayed in the budgetary description(s) of the project(s) in Attachment B, the sources of funding other than TDA are assured and adequate for completion of the project(s).
7. That the project(s) described in Attachment B are for capital construction and/or design engineering; and/or for the maintenance of a Class I bikeway which is closed to motorized traffic; and/or for the purposes of restriping Class II bicycle lanes; and/or for the development or support of a bicycle safety education program; and/or for the development of a comprehensive bicycle and/or pedestrian facilities plan, and an allocation of TDA Article 3 funding for such a plan has not been received by the **City of Milpitas** within the prior five fiscal years.
8. That the project(s) described in Attachment B is included in a locally approved bicycle, pedestrian, transit, multimodal, complete streets, or other relevant plan.
9. That any project described in Attachment B that is a bikeway meets the mandatory minimum safety design criteria published in Chapter 1000 of the California Highway Design Manual.
10. That the project(s) described in Attachment B will be completed before the funds expire.
11. That the **City of Milpitas** agrees to maintain, or provide for the maintenance of, the project(s) and facilities described in Attachment B, for the benefit of and use by the public.

TDA Article 3 Project Application Form

Fiscal Year of this Claim: 2015/2016 Applicant: City of Milpitas

Contact person: Steve Chan

Mailing Address: 455 E. Calaveras Blvd, Milpitas, CA 95035

E-Mail Address: schan@ci.milpitas.ca.gov Telephone: (408) 586-3324

Secondary Contact (in event primary not available)

E-Mail Address: Telephone:

Short Title Description of Project: 2016 Street Resurfacing Project

Amount of claim: $51,634

Functional Description of Project:

Construction of ADA ramps as part of City 2016 Street Resurfacing Project. Locations to be determined later.

Financial Plan:

List the project elements for which TDA funding is being requested (e.g., planning l, engineering, construction, contingency). Use the table below to show the project budget for the phase being funded or total project. Include prior and proposed future funding of the project.

Project Elements: ADA Ramps - $51,634

Funding Source	All Prior FYs	Application FY	Next FY	Following FYs	Totals
TDA Article 3		$51,634			$51,634
list all other sources:					
1. Community Development Block Grant (CDBG)		$50,000			$50,000
2.					
3.					
4.					
Totals		$101,634			$101,634

Project Eligibility:	**YES?/NO?**
A. Has the project been approved by the claimant's governing body? (If "NO," provide the approximate date approval is anticipated). April 2015	No
B. Has this project previously received TDA Article 3 funding? If "YES," provide an explanation on a separate page.	No
C. For "bikeways," does the project meet Caltrans minimum safety design criteria pursuant to Chapter 1000 of the California Highway Design Manual? (Available on the internet via: http://www.dot.ca.gov).	N/A
D. Has the project been reviewed by a Bicycle Advisory Committee (BAC)? (If "NO," provide an explanation). Enter date the project was reviewed by the BAC: 3/7/2015	Yes
E. Has the public availability of the environmental compliance documentation for the project (pursuant to CEQA) been evidenced by the dated stamping of the document by the county clerk or county recorder? (required only for projects that include construction).	Yes
F. Will the project be completed before the allocation expires? Enter the anticipated completion date of project (month and year) December 2016	Yes
G. Have provisions been made by the claimant to maintain the project or facility, or has the claimant arranged for such maintenance by another agency? (If an agency other than the Claimant is to maintain the facility provide its name:)	Yes

Recording Requested by and
When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: Office of the City Clerk

Record without fee under
Section 6103 - Government Code
State of California

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING INITIAL ACCEPTANCE AND REDUCING PERFORMANCE BOND FOR PINEWOOD PARK IMPROVEMENTS, PROJECTS NO. 3412, NO. 5095, NO. 5096, AND NO. 7116, AND GRANTING AUTHORIZATION TO THE DIRECTOR OF ENGINEERING TO ISSUE THE NOTICE OF FINAL ACCEPTANCE AFTER THE ONE-YEAR WARRANTY PERIOD AND TO RELEASE AND DISCHARGE THE PERFORMANCE BOND

WHEREAS, the City of Milpitas has heretofore entered into a contract with Suarez and Munoz Construction, Inc., for the subject project, and the Director of Engineering of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said Director of Engineering.

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 of Milpitas does hereby accept said improvement as completed on this 7th day of April, 2015, and does hereby authorize and direct the Director of Engineering of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Sections 8182 and 9200-9208 of the Civil Code of the State of California, and does hereby authorize and direct the Director of Engineering to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day's labor or force account. The penal sum of the faithful performance bond securing said improvement may be reduced to the sum of $181,797.45 upon request of principal and surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond, provided that said term shall not be less than one year.

3. The City Council authorizes the Director of Engineering to issue the Notice of Final Acceptance after the one-year warranty period and to release and discharge the faithful performance bond securing said improvements without further City Council action, provided all required warranty repairs are completed to the satisfaction of the Director of

Engineering; and nothing herein contained shall in any way deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the contractor or its surety, or sureties, by law or by the above-referenced to improvement contract, save and except those obligations specifically mentioned herein.

PASSED AND ADOPTED this _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

Recording Requested by and
When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: City Clerk

Record without fee under
Section 6103 - Government Code
State of California

CITY OF MILPITAS

NOTICE OF COMPLETION
(Civil Code Sections 8182 and 9200-9208)

NOTICE IS HEREBY GIVEN:

1. On or about March 18, 2014, the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: Pinewood Park Improvement, Projects No. 3412, 5095, 5096, & 7116.

2. A description of the site of which the City is owner for said work of improvement is: Pinewood Park in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.

3. The nature and interest or estate of the City as owner of said site is: City of Milpitas.

4. The name and address of the original contractor is: Suarez and Munoz Construction, Inc., 20975 Cabot Boulevard Hayward, CA 94545.

5. A general statement of the kind of work done or materials furnished to the City is as follows: Various improvements at Pinewood Park, Hall Memorial Park, and Robert E. Browne Park including new site furnishings, landscape, irrigation, and lighting upgrades.

6. The name of the sureties upon the bond of the contractor for said work of improvement is: Developers Surety and Indemnity Company 2999 Oak Road, Suite 420, Walnut Creek, CA 94597; bond # 724971P.

7. Said work of improvement was accepted by the Milpitas City Council as completed on April 7, 2015.

****

I, the undersigned, declare that I am the City Engineer of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on _____, 2015 at Milpitas, California.

_____
Steve Machida, Director of Engineering/City Engineer, City of Milpitas

NOTE: RECORD WITHIN 15 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AWARDING A CONSTRUCTION CONTRACT TO AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH THE LOWEST RESPONSIBLE BIDDER, PCD, IN THE AMOUNT OF $148,563, AND AUTHORIZING THE DIRECTOR OF ENGINEERING TO NEGOTIATE AND EXECUTE CHANGE ORDER(S) IN THE CUMULATIVE AMOUNT NOT TO EXCEED $15,000 FOR THE COMMUNITY CENTER AUDITORIUM AV SYSTEMS UPGRADE PROJECT NO. 3406

WHEREAS, on February 3, 2015, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for Community Center Auditorium AV Systems Upgrade Project No. 3406 (the "Project"), which provides for the installation of replacement audio equipment for the Community Center auditorium; and

WHEREAS, the Engineer's Estimate for the base bid Project work was $175,000; and

WHEREAS, the Project was advertised and three (3) sealed bid proposals were received and opened on March 12, 2015, which ranged from $148,563.00 to $285,272.35, and the lowest responsible base bid was submitted by PCD in the amount of $148,563.00; and

WHEREAS, no bid protest was filed with the City within five (5) days of the bid opening as set forth in the project plans and specifications; and

WHEREAS, sufficient funds to award the Project are available in the Project budget, staff recommends the City Council authorize the City Manager to award to and execute a construction contract with the lowest responsible bidder for the Project in conformity with State law; and

WHEREAS, due to the Project's tight completion schedule and ability for staff to respond swiftly to unanticipated construction conditions in order to limit potential claims or risk to the City, staff recommends the City Council authorize the Director of Engineering to negotiate and execute change order(s) in an amount not to exceed the construction contingency established for this Project of $15,000, which is approximately ten percent (10%) of the estimated construction cost.

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 herby awards the construction contract to and authorizes the City Manager to execute a construction contract and related documents with the lowest responsible bidder, PCD, for the Community Center Auditorium AV System Upgrades Project No. 3406, in the amount of $148,563.

3. The Director of Engineering is hereby authorized to negotiate and execute contract change order(s) for the Community Center Auditorium AV System Upgrades Project No. 3406 in the cumulative contingency amount not to exceed $15,000 for the Project.

PASSED AND ADOPTED this _____ day of _____, 2015 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

CITY OF MILPITAS
ENGINEERING DIVISION
BID SUMMARY

*12B

Project Name: Community Center Auditorium AV System Upgrades
Project No. : 3406
Bid Date: 03/12/15 @ 2:00 PM

BASE BID

ITEM	DESCRIPTION	Qty.	UNIT	Engineer's Estimate		PCD		Lloyd F. McKinney Associates, Inc.		Coda Technology Group	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
1	Base Contract Work	1	LS	$175,000.00	$175,000.00	$148,563.00	$148,563.00	$209,284.00	$209,284.00	$285,272.35	$285,272.35
	TOTAL				$175,000.00		**$148,563.00**		$209,284.00		$285,272.35
						APPARENT LOW BIDDER					

ADD ALTERNATE BID ITEMS

ITEM	DESCRIPTION	Qty.	UNIT	Engineer's Estimate		PCD		Lloyd F. McKinney Associates, Inc.		Coda Technology Group	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
A	End Stage Speaker	1	LS	$25,000.00	$25,000.00	$8,892.00	$8,892.00	$8,890.00	$8,890.00	$5,749.15	$5,749.15
Total					$25,000.00		$8,892.00		$8,890.00		$5,749.15

ITEM	DESCRIPTION	Qty.	UNIT	Engineer's Estimate		PCD		Lloyd F. McKinney Associates, Inc.		Coda Technology Group	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
B	Video Projection	1	LS	$65,000.00	$65,000.00	$40,927.00	$40,927.00	$45,819.00	$45,819.00	$32,620.98	$32,620.98
Total					$65,000.00		$40,927.00		$45,819.00		$32,620.98

ITEM	DESCRIPTION	Qty.	UNIT	Engineer's Estimate		PCD		Lloyd F. McKinney Associates, Inc.		Coda Technology Group	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
C	Wireless Package	1	LS	$60,000.00	$60,000.00	$44,321.00	$44,321.00	$58,213.00	$58,213.00	$34,905.05	$34,905.05
Total					$60,000.00		$44,321.00		$58,213.00		$34,905.05

ITEM	DESCRIPTION	Qty.	UNIT	Engineer's Estimate		PCD		Lloyd F. McKinney Associates, Inc.		Coda Technology Group	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
D	Portable Package	1	LS	$15,000.00	$15,000.00	$7,902.00	$7,902.00	$7,413.00	$7,413.00	$6,868.12	$6,868.12
Total					$15,000.00		$7,902.00		$7,413.00		$6,868.12

List of Sub-Contractors

Description	PCD	Lloyd F. McKinney Associates, Inc.	Coda Technology Group
Electrical	Sanpri Electrical, Inc.	Niles Electric Co.	Elco Electric, Inc.

Construction Change Order Policy for Community Center Auditorium AV Systems Upgrade Project, Project No. 3406.

2007 City Council Approved Construction Change Order Policy

Construction Award **Award Amount**	**Individual Administrative Change Order Authority**	**Cumulative Change Order Authority**
Under $50,000	$5,000	$7,500
Over $50,000	10% of Award or $25,000 whichever is small	15% of Award or $100,000 whichever is smaller

Community Center Auditorium AV Systems Upgrade Project Change Order Policy

Construction Award **Award Amount**	**Individual Administrative Change Order Authority**	**Cumulative Change Order Authority**
$148,563.00	N/A	$15,000

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS WAIVING A MINOR BID IRREGULARITY AND AWARDING A CONSTRUCTION CONTRACT TO AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH THE LOWEST RESPONSIBLE BIDDER, GHILOTTI CONSTRUCTION COMPANY, INC., IN THE AMOUNT OF $3,046,388.75, AND AUTHORIZING THE DIRECTOR OF ENGINEERING TO NEGOTIATE AND EXECUTE CHANGE ORDER(S) IN THE CUMMULATIVE AMOUNT NOT TO EXCEED $625,000 FOR THE MAIN STREET PAVEMENT RECONSTRUCTION PROJECT NO. 4277

WHEREAS, on February 17, 2015, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for the Main Street Pavement Reconstruction, Project No. 4277, (the "Project") which provides for the partial reconstruction of South Main Street from Carlo Street to Great Mall Parkway; and

WHEREAS, the Engineer's Estimate for the base bid Project work was $3,600,000; and

WHEREAS, the Project was advertised and eight (8) sealed bid proposals were received and opened on March 18, 2015, which ranged from $2,823,287.02 to $3,346,356.90. Two of the eight bids were determined to be nonresponsive. The lowest bid submitted by Bay Cities Grading and Paving Inc. was deemed nonresponsive for their failure to attend any of the mandatory pre-bid conferences as required in the bid documents. The highest bid submitted by O'Grady Paving, Inc., was also deemed nonresponsive for their failure to complete and properly fill out the bid proposal. Therefore, the lowest responsible base bid was submitted by Ghilotti Construction Company, Inc., in the amount of $2,871,691.35; and

WHEREAS, one bid protest was filed with the City within five (5) days of the bid opening as set forth in the project plans and specifications by Ghilotti Construction Company, Inc., requesting that Bay Cities Grading and Paving Inc.'s bid be determined nonresponsive for their failure to attend one of the two mandatory pre-bid meetings; and

WHEREAS, the bid documents required all proposers to attend one of two mandatory pre-bid conferences prior to submitting a bid and the City upheld the bid protest since Bay Cities Grading and Paving, Inc., failed to attend any of the mandatory pre-bid conferences; and

WHEREAS, Ghilotti Construction Company, Inc.'s bid contained a minor bid irregularity in that there was a mathematic error increasing the proposed contract price by $180.00 (One Hundred and Eighty Dollars). The Public Contract Code and the City's bid documents authorize the City to waive any minor irregularity and proceed with the award of the contract.

WHEREAS, the City Council may waive the minor irregularity since the mathematic error only increased the proposed contract price by $180.00 (One Hundred and Eighty Dollars); and

WHEREAS, the bid package included 15 add alternate work items for consideration of pricing after bid opening. The add alternate items provide for the asphalt overlay and new pavement striping of Curtis Avenue, and Corning Avenue from South Main Street to Abel Street. The cost of the additional items is $174,697.40 and would be most cost effective to include at this time. Staff recommends the award of the construction contract including the additional 15 add alternate items for a total cost of $3,046,388.75, which is well below the project's cost plan. Since the base bid came in nearly $700,000 below the estimated cost, staff recommends adding additional work to the project in order to expend all of the RDA

funds at this time. The additional work would include: asphalt overlay of Weller Lane; upgrading the signal poles at Serra and Main; installing a slotted curb at the median island in front of the Library; and additional sidewalk and roadway replacement. This additional work would be paid for out of the project construction contingency budget and no additional appropriation is required; and

WHEREAS, sufficient funds to award the Project are available in the Project budget and staff recommends the City Council authorize the City Manager to award to and execute a construction contract with the lowest responsible bidder for the Project in conformity with State law; and

WHEREAS, due to the Project's tight completion schedule and ability for staff to respond swiftly to unanticipated construction conditions in order to limit potential claims or risk to the City, staff recommends the City Council authorize the Director of Engineering to negotiate and execute change order(s) in an amount not to exceed the construction contingency established for this Project of $625,000, which is approximately twenty percent (20%) of the estimated construction cost.

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 herby waives the minor bid irregularity and awards the construction contract to and authorizes the City Manager to execute a construction contract and related documents with the lowest responsible bidder, Ghilotti Construction Company, Inc., for the Main Street Pavement Reconstruction, Project No. 4277, in the total amount of $3,046,388.75.

3. The Director of Engineering is hereby authorized to negotiate and execute contract change order(s) for the Main Street Pavement Reconstruction, Project No. 4277 in the cumulative contingency amount not to exceed $625,000 for the Project.

PASSED AND ADOPTED this _____ day of _____, 2015 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

CITY OF MILPITAS
ENGINEERING DIVISION
BID SUMMARY

***13B**

Project Name: Main Street Pavement Reconstruction
Project No. : 3412 & 4277
Bid Date: March 18, 2015

BASED BID

ITEM	DESCRIPTION	Qty.	UNIT	Engineer's Estimate		Bay Cities Paving & Grading Inc.		Ghilotti Construction Company, Inc.		Granite Rock Company		Granite Construction Company		Desilva Gates Construction, LP		RGW Construction, Inc.		G. Bortolotto & Company, Inc.		O'Grady Paving, Inc.	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
1	Changeable Message Board	3	EA	$5,000.00	$15,000.00	$1,400.00	$4,200.00	$5,000.00	$15,000.00	$4,000.00	$12,000.00	$7,000.00	$21,000.00	$5,000.00	$15,000.00	$4,500.00	$13,500.00	$3,000.00	$9,000.00	$5,000.00	$15,000.00
2	Mobilization (Max 5% of total base bid)	1	LS	$100,000.00	$100,000.00	$50,000.00	$50,000.00	$127,000.00	$127,000.00	$86,238.86	$86,238.86	$150,000.00	$150,000.00	$140,000.00	$140,000.00	$115,000.00	$115,000.00	$111,111.11	$111,111.11	UNK	UNK
3	Traffic Control (Max 5% of total base bid)	1	LS	$130,000.00	$130,000.00	$85,000.00	$85,000.00	$77,300.00	$77,300.00	$120,525.00	$120,525.00	$150,000.00	$150,000.00	$120,000.00	$120,000.00	$148,000.00	$148,000.00	$139,000.00	$139,000.00	UNK	UNK
4	Construction Staking	1	LS	$40,000.00	$40,000.00	$9,400.00	$9,400.00	$10,000.00	$10,000.00	$8,900.00	$8,900.00	$10,000.00	$10,000.00	$15,000.00	$15,000.00	$20,000.00	$20,000.00	$9,000.00	$9,000.00	$5,000.00	$5,000.00
5	Install Monument	5	EA	$600.00	$3,000.00	$682.00	$3,410.00	$650.00	$3,250.00	$700.00	$3,500.00	$900.00	$4,500.00	$700.00	$3,500.00	$1,100.00	$5,500.00	$777.00	$3,885.00	$2,400.00	$12,000.00
6	Remove Traffic Stripes and Pavement Markings	1	LS	$10,000.00	$10,000.00	$4,400.00	$4,400.00	$4,000.00	$4,000.00	$4,200.00	$4,200.00	$4,200.00	$4,200.00	$7,000.00	$7,000.00	$4,200.00	$4,200.00	$4,700.00	$4,700.00	$4,500.00	$4,500.00
7	Remove Tree	28	EA	$500.00	$14,000.00	$710.00	$19,880.00	$700.00	$19,600.00	$625.00	$17,500.00	$700.00	$19,600.00	$700.00	$19,600.00	$1,000.00	$28,000.00	$1,100.00	$30,800.00	$700.00	$19,600.00
8	Abandon 12" Reinforced Concrete Pipe	185	LF	$15.00	$2,775.00	$20.00	$3,700.00	$7.00	$1,295.00	$31.00	$5,735.00	$25.00	$4,625.00	$70.00	$12,950.00	$8.00	$1,480.00	$100.00	$18,500.00	$20.00	$3,700.00
9	Remove Inlet	3	EA	$700.00	$2,100.00	$1,025.00	$3,075.00	$1,000.00	$3,000.00	$1,565.00	$4,695.00	$1,500.00	$4,500.00	$2,000.00	$6,000.00	$1,200.00	$3,600.00	$1,500.00	$4,500.00	$1,000.00	$3,000.00
10	Remove Valve Box and Cover	2	EA	$700.00	$1,400.00	$200.00	$400.00	$150.00	$300.00	$825.00	$1,650.00	$500.00	$1,000.00	$500.00	$1,000.00	$375.00	$750.00	$700.00	$1,400.00	$100.00	$200.00
11	Remove Concrete (Curb and Gutter)	3,770	LF	$20.00	$75,400.00	$16.00	$60,320.00	$20.00	$75,400.00	$25.00	$94,250.00	$20.00	$75,400.00	$26.00	$98,020.00	$18.00	$67,860.00	$28.00	$105,560.00	$19.00	$71,630.00
12	Remove Concrete (Sidewalk)	20,753	SF	$8.00	$166,024.00	$7.40	$153,572.20	$2.00	$41,506.00	$4.00	$83,012.00	$5.00	$103,765.00	$4.00	$83,012.00	$4.25	$88,200.25	$4.27	$88,615.31	$4.50	$93,388.50
13	Remove Concrete (Driveway)	2,895	SF	$10.00	$28,950.00	$13.00	$37,635.00	$4.00	$11,580.00	$3.25	$9,408.75	$7.00	$20,265.00	$5.00	$14,475.00	$5.00	$14,475.00	$6.00	$17,370.00	$6.25	$18,093.75
14	Remove Concrete (Bus Pad)	1,350	SF	$18.00	$24,300.00	$8.00	$10,800.00	$6.00	$8,100.00	$11.50	$15,525.00	$12.00	$16,200.00	$10.00	$13,500.00	$8.00	$10,800.00	$15.00	$20,250.00	$8.00	$10,800.00
15	Remove Concrete (Curb Ramps)	18	EA	$1,000.00	$18,000.00	$1,375.00	$24,750.00	$250.00	$4,500.00	$1,329.00	$23,922.00	$900.00	$16,200.00	$1,500.00	$27,000.00	$800.00	$14,400.00	$1,600.00	$28,800.00	$840.00	$15,120.00
16	Remove Concrete (Concrete Crosswalk)	362	SF	$16.00	$5,792.00	$8.45	$3,058.90	$4.00	$1,448.00	$12.00	$4,344.00	$12.00	$4,344.00	$15.00	$5,430.00	$36.00	$13,032.00	$6.00	$2,172.00	$10.50	$3,801.00
17	Remove Concrete (Valley Gutter)	785	SF	$15.00	$11,775.00	$8.45	$6,633.25	$4.00	$3,140.00	$5.50	$4,317.50	$8.00	$6,280.00	$5.00	$3,925.00	$7.00	$5,495.00	$6.00	$4,710.00	$7.35	$5,769.75
18	Remove Concrete (Concrete Pavement Conforms)	440	SF	$2.50	$1,100.00	$6.34	$2,789.60	$3.00	$1,320.00	$10.00	$4,400.00	$5.00	$2,200.00	$5.00	$2,200.00	$11.00	$4,840.00	$6.00	$2,640.00	$4.50	$1,980.00
19	Hot Mix Asphalt (3/4" Type A)	3,072	Ton	$110.00	$337,920.00	* $79.00	$242,688.00	* $90.00	$276,480.00	$90.00	$276,480.00	$105.00	$322,560.00	$78.00	$239,616.00	$98.00	$301,056.00	$93.39	$286,894.08	$100.00	$307,200.00
20	Rubberized Hot Mix Asphalt (1/2" Type G)	5,580	Ton	$130.00	$725,400.00	$98.00	$546,840.00	$95.00	$530,100.00	$97.00	$541,260.00	$112.00	$624,960.00	$102.00	$569,160.00	$100.00	$558,000.00	$114.39	$638,296.20	$130.00	$725,400.00
21	Inlay/Digout (Base Repair - HMA, -Type A)	32,000	SF	$4.00	$128,000.00	$6.25	$200,000.00	$5.00	$160,000.00	$4.45	$142,400.00	$6.00	$192,000.00	$5.00	$160,000.00	$5.25	$168,000.00	$5.71	$182,720.00	$5.20	$166,400.00
22	Paving Mat	177,930	SF	$0.55	$97,861.50	$0.72	$128,109.60	$0.50	$88,965.00	$0.67	$119,213.10	$0.50	$88,965.00	$0.60	$106,758.00	$1.25	$222,412.50	$0.73	$129,888.90	$0.75	$133,447.50
23	Cold Plane Milling	177,930	SF	$1.20	$213,516.00	$0.65	$115,654.50	$1.00	$177,930.00	$0.70	$124,551.00	$0.90	$160,137.00	$1.00	$177,930.00	$1.50	$266,895.00	$0.78	$138,785.40	$0.80	$142,344.00
24	Wedge Cuts & Conforms (Max Depth =0.20')	52,745	SF	$0.40	$21,098.00	$0.24	$12,658.80	$0.40	$21,098.00	$0.50	$26,372.50	$0.30	$15,823.50	$0.20	$10,549.00	$1.00	$52,745.00	$0.39	$20,570.55	$0.50	$26,372.50
25	Water Pollution Control Work	1	LS	$8,873.10	$8,873.10	$5,250.00	$5,250.00	$3,500.00	$3,500.00	$6,500.00	$6,500.00	$6,000.00	$6,000.00	$5,000.00	$5,000.00	$15,000.00	$15,000.00	$1,111.11	$1,111.11	$10,000.00	$10,000.00
26	Crack Sealing	1	LS	$40,000.00	$40,000.00	$13,500.00	$13,500.00	$12,000.00	$12,000.00	$12,850.00	$12,850.00	$11,000.00	$11,000.00	$10,000.00	$10,000.00	$15,000.00	$15,000.00	$15,000.00	$15,000.00	$15,000.00	$15,000.00
27	Roadside Signs	1	LS	$4,000.00	$4,000.00	$1,750.00	$1,750.00	$2,000.00	$2,000.00	$1,650.00	$1,650.00	$4,500.00	$4,500.00	$2,000.00	$2,000.00	$2,500.00	$2,500.00	$1,700.00	$1,700.00	$1,800.00	$1,800.00
28	Concrete Crosswalk (Medium Broom Finish)	2,830	SF	$22.00	$62,260.00	$21.00	$59,430.00	$25.00	$70,750.00	$28.00	$79,240.00	$24.00	$67,920.00	$35.00	$99,050.00	$23.00	$65,090.00	$37.00	$104,710.00	$22.00	$62,260.00
29	Miscellaneous Concrete Construction (Curb and Gutter)	3,770	LF	$40.00	$150,800.00	$50.00	$188,500.00	$60.00	$226,200.00	$75.50	$284,635.00	$37.50	$141,375.00	$66.00	$248,820.00	$42.00	$158,340.00	$61.00	$229,970.00	$54.00	$203,580.00
30	Miscellaneous Concrete Construction (Flush Vertical Curb)	102	LF	$38.00	$3,876.00	$47.00	$4,794.00	$50.00	$5,100.00	$42.50	$4,335.00	$31.00	$3,162.00	$30.00	$3,060.00	$12.00	$1,224.00	$35.00	$3,570.00	$58.00	$5,916.00
31	Miscellaneous Concrete Construction (Valley Gutter)	785	SF	$300.00	$235,500.00	$12.00	$9,420.00	$40.00	$31,400.00	$17.50	$13,737.50	$15.00	$11,775.00	$30.00	$23,550.00	$14.00	$10,990.00	$35.00	$27,475.00	$14.00	$10,990.00
32	Miscellaneous Concrete Construction (Curb Ramp)	18	EA	$5,000.00	$90,000.00	$3,200.00	$57,600.00	$3,000.00	$54,000.00	$4,719.00	$84,942.00	$1,900.00	$34,200.00	$3,500.00	$63,000.00	$1,200.00	$21,600.00	$3,780.00	$68,040.00	$1,900.00	$34,200.00
33	Miscellaneous Concrete Construction (Sidewalk)	21,718	SF	$12.00	$260,616.00	$7.40	$160,713.20	$13.00	$282,334.00	$8.80	$191,118.40	$9.00	$195,462.00	$7.00	$152,026.00	$10.00	$217,180.00	$7.25	$157,455.50	$8.50	$184,603.00
34	Miscellaneous Concrete Construction (Driveway)	2,895	SF	$16.00	$46,320.00	$8.45	$24,462.75	$15.00	$43,425.00	$15.00	$43,425.00	$16.00	$46,320.00	$7.00	$20,265.00	$19.00	$55,005.00	$9.00	$26,055.00	$15.00	$43,425.00
35	Miscellaneous Concrete Construction (Concrete Pavement Conform)	440	SF	$20.00	$8,800.00	$8.45	$3,718.00	$20.00	$8,800.00	$34.00	$14,960.00	$16.00	$7,040.00	$7.00	$3,080.00	$9.00	$3,960.00	$9.00	$3,960.00	$15.00	$6,600.00
36	Detectable Warning Surface	588	SF	$50.00	$29,400.00	$58.00	$34,104.00	$20.00	$11,760.00	$24.00	$14,112.00	$42.00	$24,696.00	$30.00	$17,640.00	$15.00	$8,820.00	$35.00	$20,580.00	$40.00	$23,520.00
37	Adjust Appurtenance to Grade (Manhole Frame and Cover)	43	EA	$600.00	$25,800.00	$800.00	$34,400.00	$600.00	$25,800.00	$625.00	$26,875.00	$750.00	$32,250.00	$700.00	$30,100.00	$750.00	$32,250.00	$570.00	$24,510.00	$850.00	$36,550.00
38	Adjust Appurtenance to Grade (Valve Box and Cover)	53	EA	$300.00	$15,900.00	$475.00	$25,175.00	$575.00	$30,475.00	$454.00	$24,062.00	$500.00	$26,500.00	$400.00	$21,200.00	$450.00	$23,850.00	$450.00	$23,850.00	$450.00	$23,850.00
39	Adjust Appurtenance to Grade (Traffic Signal Pull Box)	4	EA	$400.00	$1,600.00	$475.00	$1,900.00	$575.00	$2,300.00	$454.00	$1,816.00	$800.00	$3,200.00	$300.00	$1,200.00	$350.00	$1,400.00	$700.00	$2,800.00	$500.00	$2,000.00
40	Adjust Appurtenance to Grade (Monument Box)	5	EA	$400.00	$2,000.00	$475.00	$2,375.00	$575.00	$2,875.00	$454.00	$2,270.00	$500.00	$2,500.00	$400.00	$2,000.00	$450.00	$2,250.00	$700.00	$3,500.00	$450.00	$2,250.00
41	Install Water Valve Box and Cover	2	EA	$3,500.00	$7,000.00	$475.00	$950.00	$400.00	$800.00	$967.00	$1,934.00	$900.00	$1,800.00	$500.00	$1,000.00	$600.00	$1,200.00	$700.00	$1,400.00	$350.00	$700.00
42	15" Reinforced Concrete Pipe	102	LF	$130.00	$13,260.00	$101.00	$10,302.00	$300.00	$30,600.00	$158.00	$16,116.00	$250.00	$25,500.00	$600.00	$61,200.00	$180.00	$18,360.00	$317.00	$32,334.00	$250.00	$25,500.00
43	Curb Storm Drain Inlet (City # 462)	2	EA	$3,500.00	$7,000.00	$4,600.00	$9,200.00	$1,500.00	$3,000.00	$4,256.00	$8,512.00	$6,500.00	$13,000.00	$4,000.00	$8,000.00	$2,400.00	$4,800.00	$4,000.00	$8,000.00	$5,000.00	$10,000.00
44	Painted Curb	210	LF	$2.00	$420.00	$3.17	$665.70	$3.00	$630.00	$3.00	$630.00	$4.00	$840.00	$3.00	$630.00	$3.00	$630.00	$4.00	$840.00	$3.10	$651.00
45	Painted Traffic Stripe (4")	2,710	LF	$1.00	$2,710.00	$0.17	$460.70	$0.15	$406.50	$0.16	$433.60	$0.20	$542.00	$0.20	$542.00	$0.20	$542.00	$0.20	$542.00	$0.20	$542.00
46	Painted Traffic Stripe (6")	10,405	LF	$1.25	$13,006.25	$0.18	$1,872.90	$0.17	$1,768.85	$0.17	$1,768.85	$0.20	$2,081.00	$0.20	$2,081.00	$0.20	$2,081.00	$0.20	$2,081.00	$0.20	$2,081.00
47	Painted Pavement Marking	280	SF	$2.50	$700.00	$3.70	$1,036.00	$3.50	$980.00	$3.50	$980.00	$3.50	$980.00	$4.00	$1,120.00	$3.50	$980.00	$4.00	$1,120.00	$3.50	$980.00
48	Pavement Marker (Retroreflective)	800	EA	$4.00	$3,200.00	$1.90	$1,520.00	$1.75	$1,400.00	$1.80	$1,440.00	$1.80	$1,440.00	$2.00	$1,600.00	$2.00	$1,600.00	$2.00	$1,600.00	$2.00	$1,600.00
49	Pavement Marker (Non-Reflective)	3,825	EA	$1.75	$6,693.75	$1.48	$5,661.00	$1.40	$5,355.00	$1.40	$5,355.00	$1.40	$5,355.00	$2.00	$7,650.00	$1.40	$5,355.00	$1.50	$5,737.50	$1.50	$5,737.50
50	Thermoplastic Traffic Stripe (4")	372	LF	$1.65	$613.80	$1.06	$394.32	$1.00	$372.00	$1.00	$372.00	$2.00	$744.00	$1.00	$372.00	$1.00	$372.00	$2.00	$744.00	$1.00	$372.00
51	Thermoplastic Traffic Stripe (8")	86	LF	$3.35	$288.10	$2.11	$181.46	$2.00	$172.00	$2.00	$172.00	$3.00	$258.00	$2.00	$172.00	$2.00	$172.00	$3.00	$258.00	$2.00	$172.00
52	Thermoplastic Traffic Stripe (12")	1,550	LF	$4.25	$6,587.50	$3.17	$4,913.50	$3.00	$4,650.00	$3.00	$4,650.00	$3.00	$4,650.00	$3.00	$4,650.00	$3.00	$4,650.00	$3.27	$5,068.50	$3.00	$4,650.00
53	Thermoplastic Traffic Stripe (24")	1,700	LF	$5.00	$8,500.00	$6.34	$10,778.00	$6.00	$10,200.00	$6.00	$10,200.00	$6.00	$10,200.00	$6.00	$10,200.00	$6.00	$10,200.00	$7.00	$11,900.00	$7.00	$11,900.00
54	Thermoplastic Pavement Marking	992	SF	$4.50	$4,464.00	$3.17	$3,144.64	$3.00	$2,976.00	$3.00	$2,976.00	$3.00	$2,976.00	$3.00	$2,976.00	$3.00	$2,976.00	$3.00	$2,976.00	$3.10	$3,075.20
55	24" Box Tree	28	EA	$800.00	$22,400.00	$2,400.00	$67,200.00	$1,500.00	$42,000.00	$1,720.00	$48,160.00	$2,500.00	$70,000.00	$1,800.00	$50,400.00	$1,450.00	$40,600.00	$2,600.00	$72,800.00	$2,600.00	$72,800.00
56	Install Bollards	6	EA	$500.00	$3,000.00	$240.00	$1,440.00	$225.00	$1,350.00	$487.00	$2,922.00	$300.00	$1,800.00	$250.00	$1,500.00	$225.00	$1,350.00	$227.00	$1,362.00	$250.00	$1,500.00
57	Flashing Beacon (Solar Powered, RRFB)	6	EA	$9,000.00	$54,000.00	$10,500.00	$63,000.00	$9,000.00	$54,000.00	$8,450.00	$50,700.00	$8,000.00	$48,000.00	$9,000.00	$54,000.00	$8,000.00	$48,000.00	$10,000.00	$60,000.00	$10,000.00	$60,000.00
58	Main Street / Great Mall Parkway Signal Modification	1	LS	$30,000.00	$30,000.00	$32,000.00	$32,000.00	$25,000.00	$25,000.00	$27,600.00	$27,600.00	$20,000.00	$20,000.00	$25,000.00	$25,000.00	$28,000.00	$28,000.00	$30,000.00	$30,000.00	$40,000.00	$40,000.00
59	Main Street / Great Mall Drive Signal Modification	1	LS	$23,000.00	$23,000.00	$29,500.00	$29,500.00	$25,000.00	$25,000.00	$25,400.00	$25,400.00	$20,000.00	$20,000.00	$25,000.00	$25,000.00	$26,000.00	$26,000.00	$29,000.00	$29,000.00	$30,000.00	$30,000.00
60	Main Street / Curtis Avenue Signal Modification	1	LS	$59,000.00	$59,000.00	$60,000.00	$60,000.00	$50,000.00	$50,000.00	$52,900.00	$52,900.00	$30,000.00	$30,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$56,000.00	$56,000.00	$16,000.00	$16,000.00
61	Main Street / Serra Way Signal Modification	1	LS	$175,000.00	$175,000.00	$163,000.00	$163,000.00	$136,000.00	$136,000.00	$128,469.00	$128,469.00	$50,000.00	$50,000.00	$88,000.00	$88,000.00	$150,000.00	$150,000.00	$157,000.00	$157,000.00	$160,000.00	$160,000.00
	TOTAL				$3,600,000.00	**#,** * $2,823,287.02		* **$2,871,691.35**		$2,932,618.06		$2,946,590.50		$2,949,709.00		$3,160,567.75		$3,194,218.16		** $3,346,356.90	
								LOWEST RESPONSIBLE BIDDER													

Bidder did not attend one of the two mandatory pre-bid meetings.

* Mathmatical summation error and a unit extension error.

** Failure to complete and properly fill out the bid proposal.

CITY OF MILPITAS
ENGINEERING DIVISION
BID SUMMARY

Project Name: Main Street Pavement Reconstruction
Project No. : 3412 & 4277
Bid Date: March 18, 2015

ADD ALTERNATE BID ITEMS

ITEM	DESCRIPTION	Qty.	UNIT	Engineer's Estimate		Bay Cities Paving &		Ghilotti Construction		Granite Rock Company		Granite Construction		Desilva Gates Construction,		RGW Construction, Inc.		G. Bortolotto & Company,		O'Grady Paving, Inc.	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
A*	Remove Traffic Stripes and Pavement Markings	1	LS	$3,000.00	$3,000.00	$1,480.00	$1,480.00	$1,500.00	$1,500.00	$1,400.00	$1,400.00	$10,000.00	$10,000.00	$3,000.00	$3,000.00	$5,500.00	$5,500.00	$1,700.00	$1,700.00	$1,500.00	$1,500.00
B*	Rubberized Hot Mix Asphalt (1/2" - Type G)	780	Ton	$140.00	$109,200.00	$107.00	$83,460.00	$140.00	$109,200.00	$113.00	$88,140.00	$160.00	$124,800.00	$120.00	$93,600.00	$105.00	$81,900.00	$121.00	$94,380.00	$150.00	$117,000.00
C*	Inlay/Digout (Base Repair - HMA, Type A)	4,415	SF	$5.00	$22,075.00	$6.00	$26,490.00	$8.00	$35,320.00	$9.00	$39,735.00	$15.00	$66,225.00	$10.00	$44,150.00	$6.00	$26,490.00	$7.00	$30,905.00	$6.00	$26,490.00
D*	Wedge Cuts and Conforms	17,130	SF	$0.75	$12,847.50	$0.63	$10,791.90	$1.00	$17,130.00	$1.00	$17,130.00	$1.00	$17,130.00	$1.00	$17,130.00	$0.65	$11,134.50	$0.39	$6,680.70	$0.75	$12,847.50
E*	Water Pollution Control	1	LS	$2,000.00	$2,000.00	$4,400.00	$4,400.00	$1,000.00	$1,000.00	$1,357.00	$1,357.00	$5,000.00	$5,000.00	$2,000.00	$2,000.00	$1,500.00	$1,500.00	$1,111.11	$1,111.11	$3,000.00	$3,000.00
F*	Crack Sealing	1	LS	$7,500.00	$7,500.00	$4,400.00	$4,400.00	$6,500.00	$6,500.00	$4,140.00	$4,140.00	$10,000.00	$10,000.00	$5,000.00	$5,000.00	$7,500.00	$7,500.00	$8,000.00	$8,000.00	$6,000.00	$6,000.00
G*	Adjust Appurtenance to Grade (Manhole Frame and Cover)	2	EA	$600.00	$1,200.00	$800.00	$1,600.00	$500.00	$1,000.00	$550.00	$1,100.00	$900.00	$1,800.00	$1,000.00	$2,000.00	$600.00	$1,200.00	$700.00	$1,400.00	$850.00	$1,700.00
H*	Adjust Appurtenance to Grade (Valve Box and Cover)	1	EA	$300.00	$300.00	$475.00	$475.00	$400.00	$400.00	$325.00	$325.00	$900.00	$900.00	$500.00	$500.00	$450.00	$450.00	$777.00	$777.00	$450.00	$450.00
I*	Painted Traffic Stripe (4")	765	LF	$1.00	$765.00	$0.17	$130.05	$0.20	$153.00	$0.16	$122.40	$1.00	$765.00	$0.40	$306.00	$0.20	$153.00	$0.20	$153.00	$0.20	$153.00
J*	Painted Traffic Stripe (6")	1,062	LF	$1.25	$1,327.50	$0.18	$191.16	$0.20	$212.40	$0.17	$180.54	$1.00	$1,062.00	$0.50	$531.00	$0.20	$212.40	$0.20	$212.40	$0.20	$212.40
K*	Painted Pavement Marking	70	SF	$2.50	$175.00	$3.70	$259.00	$4.00	$280.00	$3.50	$245.00	$20.00	$1,400.00	$4.00	$280.00	$3.50	$245.00	$4.00	$280.00	$4.00	$280.00
L*	Pavement Marker (Retroreflective)	80	EA	$4.00	$320.00	$1.90	$152.00	$2.00	$160.00	$1.80	$144.00	$5.00	$400.00	$2.00	$160.00	$2.00	$160.00	$3.00	$240.00	$2.00	$160.00
M*	Pavement Marker (Non-Reflective)	315	EA	$1.75	$551.25	$1.48	$466.20	$2.00	$630.00	$1.40	$441.00	$3.00	$945.00	$2.00	$630.00	$2.00	$630.00	$2.00	$630.00	$1.50	$472.50
N*	Thermoplastic Traffic Stripe (12")	140	LF	$4.25	$595.00	$3.17	$443.80	$3.00	$420.00	$3.00	$420.00	$2.00	$280.00	$3.00	$420.00	$3.00	$420.00	$4.00	$560.00	$3.00	$420.00
O*	Thermoplastic Pavement Marking	264	SF	$4.50	$1,188.00	$3.17	$836.88	$3.00	$792.00	$3.00	$792.00	$40.00	$10,560.00	$3.00	$792.00	$3.00	$792.00	$4.00	$1,056.00	$3.00	$792.00
	Total				163,044.25		135,575.99		174,697.40		155,671.94		251,267.00		170,499.00		138,286.90		148,085.21		171,477.40

List of Sub-Contractors

Description	Bay Cities Paving &	Ghilotti Construction	Granite Rock Company	Granite Construction	Desilva Gates Construction,	RGW Construction, Inc.	G. Bortolotto & Company,	O'Grady Paving, Inc.
Adjust Frames & Covers	Johnson Construction	Pixley Construction	Pixley Construction	JCC	Johnson Construction	JCC		
Remove Trees	Mountain Enterprises		Mountain Enterprises	Mountain Enterprises	Mountain Enterprises	Mountain Enterprises	Mountain Enterprises	Atlas Tree
Concrete	Vanguard Construction			Sposeto	Vanguard Construction	Imperial Shotcrete	Vanguard Construction	Sposeto
Crack Seal	Bond Blacktop		Rubberized Crackfiller		Bond Blacktop		Graham Contractors	Bond Blacktop
Electrical	St Francis Electric	Columbia Electrical	Columbia Electrical	Columbia Electrical	Columbia Electrical	Columbia Electrical	San Jose Signal Electric	Columbia Electrical
Paving Mat	Pacific Northwest Oil	Pacific Northwest Oil	Telfer Geosynthetics	Pacific Northwest Oil	Pacific Northwest Oil	Telfer Geosynthetics	Pacific Northwest Oil	Telfer Geosynthetics
Striping	Chrisp Co	Chrisp Co	Chrisp Co	Chrisp Co	Chrisp Co	Chrisp Co	Chrisp Co	Chrisp Co
Grinding	Ankak Corp			Anrk				
Trees	RMT		RMT	Green Vista Landscape	JJ Nguyen	JJ Nguyen		
Landscaping		JJ Nguyen					Green Vista Landscape	JJ Nguyen
Storm Drain					TDW Construction			
Survey						F3		

Construction Change Order Policy for Main Street Pavement Reconstruction, Project No. 4277

2007 City Council Approved Construction Change Order Policy

Construction Award Award Amount	**Individual Administrative Change Order Authority**	**Cumulative Change Order Authority**
Under $50,000	$5,000	$7,500
Over $50,000	10% of Award or $25,000 whichever is small	15% of Award or $100,000 whichever is smaller

Main Street Pavement Reconstruction Change Order Policy

Construction Award Award Amount	**Individual Administrative Change Order Authority**	**Cumulative Change Order Authority**
$3,046,388.75	N/A	$625,000

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING AN AGREEMENT WITH CENTRAL MEDICAL LABORATORY FOR DRUG AND ALCOHOL TESTING FROM APRIL 15, 2015 TO APRIL 14, 2016 IN THE NOT-TO-EXCEED AMOUNT OF $19,500.00 AND AUTHORIZING THE CITY MANAGER (OR DESIGNEE) TO EXERCISE UP TO FOUR (4) ANNUAL OPTIONS WITH ANNUAL FEE INCREASES NOT TO EXCEED 5% PER YEAR, SUBJECT TO APPROPRIATION OF FUNDS AND WITHOUT FURTHER CITY COUNCIL APPROVAL

WHEREAS, Section I-2-3.09 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the Purchasing Agent determines that there is only one source for the required supply or service; and

WHEREAS, after conducting a good faith review of the available sources such as the Police Departments of San Jose, Santa Clara, Campbell and the Director of the Santa Clara County Crime Lab, the Purchasing Agent has determined that Central Medical Laboratory, a California corporation, is the only source for criminal specimen collection in Santa Clara County; and

WHEREAS, the City's Purchasing Agent recommends the City Council approve the Agreement between the City and Central Medical Laboratory for the period of April 15, 2015 through April 14, 2016 in the not-to-exceed amount of Nineteen Thousand Five Hundred dollars ($19,500.00); and

WHEREAS, City staff also requests authority for the City Manager or designee to renew the Agreement on an annual basis for up to four (4) years with an annual increase of no more than five percent (5%), without further City Council approval except appropriation of funds.

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 approves the Agreement for drug and alcohol testing for the Police Department with Central Medical Laboratory, a California corporation, in the not-to-exceed amount of Nineteen Thousand Five hundred dollars ($19,500.00) for the period of April 15, 2015 through April 14, 2016, a copy of which is attached hereto as **Exhibit A**; and

3. The City Council authorize the City Manager or designee to extend the term of the Agreement on an annual basis for up to four (4) additional years with an annual increase

in compensation of no more than five percent (5%), without further City Council approval except appropriation of funds.

PASSED AND ADOPTED this ____ day of _____, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

_____

Mary Lavelle, City Clerk

_____

Jose Esteves, Mayor

APPROVED AS TO FORM:

_____

Michael J. Ogaz, City Attorney

EXHIBIT A TO RESOLUTION

SHORT FORM PURCHASE OF SERVICE CONTRACT

The parties to this Short Form Purchase of Services Contract (Contract) do mutually agree and promise as follows:

1. Parties. The parties to this Contract are the CITY OF MILPITAS, CALIFORNIA, a municipal corporation (City) and the following named Contractor: **Central Medical Laboratory**, a California corporation.

(Contact Name) **Frank Ammon**

(Street Address) **P.O. Box 28188**

(City/State/Zip Code) **San Jose, CA 95159**

(Telephone) **408-295-9845**

(Email Address) **cmlinfo@sbcglobal.net**

(Fax Number) **408-295-4955**

(Taxpayer ID #) **941496795**

(Milpitas Business License #) **32182**

2. Term. The effective date of this Contract is **April 15, 2015 thru April 14, 2016 with the option for City, at its sole option, to extend the Contract up to four (4) additional one (1) year options,** unless sooner terminated as provided herein. City may extend the Contract by providing written notice to Contractor in the form attached hereto as **Exhibit D** prior to the then applicable term.

3. Payment Limit. City's total annual payments to Contractor under this Contract shall not exceed: **$19,500.00**. **City will make monthly payments within 30 days of receipt of each approved invoice, based on the "Rate Schedule" attached hereto as Exhibit B and incorporated herein.**

4. Contractor's Obligations.

(a) To the satisfaction of the City's Project Manager, Contractor shall provide the following services: **Drug and alcohol testing in accordance with the "Scope of Work" attached hereto as Exhibit A and incorporated herein.**

(b) Contractor shall perform the above-referenced services at the following specified location/s: **Various as directed by the Milpitas Police Department.**

(c) Name or type of service: **Drug and alcohol testing.**

5. City's Obligations. City shall pay Contractor as follows: **not-to-exceed $19,500.00** per year total payment for all services rendered under this Contract.

6. Supplemental Conditions. This Contract is subject to the Supplemental Conditions attached hereto, which are incorporated herein by reference.

7. Signatures. These signatures attest the parties' agreement hereto:

CENTRAL MEDICAL LABORATORY

_____
Name of Authorized Representative

_____
Title of Authorized representative

CITY OF MILPITAS, CALIFORNIA
a municipal corporation:

By: _____
Thomas C. Williams, City Manager

Approved as to form:

By: _____
Michael J. Ogaz, City Attorney

Approved as to content:

By: _____
Kevin Moscuzza, City Project Manager

SUPPLEMENTAL CONDITIONS

1. Independent Contractor. It is expressly agreed that Contractor is to perform the services described herein as an independent contractor pursuant to California Labor Code Section 3353, under the control of the City as to the result of his work only but not as to the means by which such result is accomplished. Nothing contained herein shall in any way be construed to make Contractor or any of its agents or employees, an agent, employee or representative of the City. Contractor shall be entirely responsible for the compensation of any assistants used by Contractor in providing said services.

2. Termination. The City may terminate this Contract at any time upon giving the other party five (5) days' written notice of such termination. In the event of termination, the City shall be liable only to pay to the Contractor compensation for services rendered up to the date of the Contract's termination.

3. Assignment. Contractor shall not assign this Contract, or any part thereof, or any right of the Contractor hereunder without the prior written consent of the City.

4. Indemnity. Contractor shall indemnify, defend and hold the City harmless from and against all claims, demands and causes of action for injury, death or damage to any person or property which may arise or result from the contractor's performance of this Contract or from acts or omissions of any person(s) employed or an agent of Contractor.

5. Anti-Discrimination. Contractor agrees to observe the provisions of the City of Milpitas Standard Operating Procedure 16.8 “Anti-Discrimination Policy’ and Title VII of the Civil Rights Act of 1964, obligating every contractor or subcontractor under a contract or subcontract to the City of Milpitas for public works or for goods or service to refrain from discriminatory employment practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor.

6. Business License. Pursuant to the City of Milpitas Municipal Code, Tile III Business and Professions, Section 1-4.01 Requirement and Special Exemptions …”it shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City of Milpitas without first having procured a license from said City”.

7. Insurance. During the entire term of this Contract and any extension or modification thereof, the CONTRACTOR shall keep in effect insurance policies meeting the following insurance requirements: See Exhibit B – Insurance Requirements General

8. Price Adjustments. Eligibility for price adjustments occurs at each renewal period when an option is exercised to extend the Contract. All requested price increases shall not exceed 5% and must be justified by documented increase to the contractor such, as labor rate increases, cost of materials, or similar factors. All options to exercise contract extensions shall be subject to availability of funds and at the City’s sole discretion. Such options shall be exercised by use of the “Notice of Exercise of Option to Extend Agreement” document included with this Contract as Exhibit D.

EXHIBIT A
SCOPE OF WORK

Contractor shall provide the following services subject to the City's review and approval:

1. This is an "On Call" service available 24 hours a day, 365 days a year.

2. Central Medical Lab technicians are dispatched as needed by the City of Milpitas Police Dispatch to any of the nine locations listed on Exhibit B "Rate Schedule" within 30 minutes.

3. Upon arrival at the designated location the certified technician, depending on what type of test is requested, draws a blood sample, following the attached procedure (Exhibit -A1). Urine samples are not drawn, they are only observed.

4. The sample(s) follow the standard evidence "chain of custody" procedures and are delivered to the Alcohol Investigation Bureau lock box.

5. Santa Clara County Crime Lab personnel pick up the samples from the Alcohol Investigation Bureau lock box for analysis the next business day.

EXHIBIT B
RATE SCHEDULE

The following rates shall apply per location listed **per specimen draw** and are the same for blood or urine collection.

Alcohol Investigation Bureau	$50.00
Santa Clara County Jail	$50.00
Elmwood Prison	$55.00
Valley Medical Center	$57.00
Milpitas Police Station	$60.00
Milpitas Sub-Station - Great Mall	$60.00
Regional Medical Center	$62.00
El Camino Hospital	$62.00
Stanford Hospital	$100.00

EXHIBIT C
INSURANCE REQUIREMENTS - GENERAL

Definition:
For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:
No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's liability insurance for the benefit of his employees.

Minimum Scope of Insurance: (Check Mark Indicates Required)
Coverage must be *at least as broad as:*

(X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
(X) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
(X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
( ) Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.
( ) Architects' and Engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance:
Contractor must maintain limits no less than:

1.	**General Liability:** (Including operations, products and completed operations, as applicable.)	**$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
2.	**Automobile Liability:**	**$1,000,000** per accident for bodily injury and property damage.
3.	**Workers' Compensation**	Statutory
	Employer's Liability:	**$1,000,000** each accident **$1,000,000** disease-policy limit **$1,000,000** disease-each employee

4. **Professional Liability or Errors & Omissions Liability:** **$1,000,000** each occurrence
$1,000,000 policy aggregate

Deductibles and Self-Insured Retentions:
Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.

2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Contractor's insurance and shall not contribute with it**.

3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.

4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:
Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:
Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City

reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

Subcontractors:
Contractors must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

Absence of Insurance:
If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement

EXHIBIT D - NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE and DATE:	
CONTRACTOR Name and Address:	
DATE OF OPTION:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to the Terms and Conditions of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

OPTION NO.	

NEW OPTION TERM

Begin date:	
End date:	

□ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI upon which adjustment is based:	

Pursuant to Section ___ of the Agreement the Rates of Compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF Milpitas
a municipal corporation

By_____
Name: Chris Schroeder
Title: Purchasing Agent

Declaration of Person Qualified to Perform Venipuncture

I am qualified pursuant to the California Business and Professional Code section 1246, Title 17 of the California Code of Regulations, and / or the California Vehicle Code section 23158 to perform venipuncture and was so qualified when I worked as a (check all that apply):

_____ Clinical Laboratory Scientist
_____ Licensed Clinical Laboratory Technologist
_____ Registered Nurse
_____ Licensed Vocational Nurse
___X___ Certified Phlebotomy Technician

On _____when I took blood from a person identified to me as:

_____

I performed the blood draw using the following procedures:

I cleansed the area to be punctured with the non-alcoholic disinfectant and the Arresting Officer witnessed my use of the non-alcoholic disinfectant with the above-name defendant.

A sterilized needle, holder and needle protector was employed to withdrawn blood from the defendant's vein. I will withdraw enough blood to fill the vacuum vial furnished by the Santa Clara Crime Laboratory. Prior to using it, I examined the vacuum vial and observed that it contained a dry white powder.

I discarded the needle, holder and disinfectant and inverted the vial 8 to 10 times to prevent the blood from clotting.

I labeled the vials of blood with the full name of the defendant, the date and time of withdrawal and place my initials on the label.

I gave the vial to the Officer who accompanied the defendant, and I observed the Officer place the vials in the envelope furnished by the Santa Clara Crime Laboratory and seal it.

The sample(s) was/were taken and handle in a medically approved manner.

I,_____,declare under penalty of perjury that under the laws of the State of California the foregoing is true and correct.

Dated: _____ at _____, California

Signature of Declarant: _____

Original: Attach to Admin Per Se Documents
& return to DMV-Driver Safety Office

Law Enforcement Case #_____

Driver's license # _____(optional)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS FINDING THE NEWBY ISLAND RESOURCE AND RECOVERY PARK AND ITS OPERATIONAL ACTIVITIES TO CONSTITUTE A PUBLIC NUISANCE

WHEREAS, numerous areas within the City of Milpitas are currently and repeatedly subject to inundations of particulates and/or gaseous matter causing obnoxious odors and potentially creating adverse health effects to persons residing, working or traveling within the City of Milpitas; and

WHEREAS, it has come to the attention of the citizens and City Council of the City of Milpitas that the Newby Island Resource and Recovery Park (Newby Island), located in the City of San Jose adjacent to the City of Milpitas and to public and private properties located within Milpitas, is a continuing source of odors to the Milpitas community; and

WHEREAS, citizens of Milpitas and other affected persons have concluded that the source of the odors plaguing the region is the combined activities taking place at Newby Island, including the composting facility, the recycling facility, the landfill facility, and transportation of refuse and other materials to and from Newby Island; and

WHEREAS, in excess of 16,000 persons have signed a petition seeking closure of Newby Island and cessation of the activities causing the odor and public nuisance and to halt expansion of the landfill and permits to allow it to increase in height by 95' and thus to expand and extend the life span of the landfill, and

WHEREAS, it has been reported a March 16, 2015, Milpitas Engineering Report that the Bay Area Air Quality Management District (BAAQMD) had recently issued three (3) Public Nuisance Violations to the Newby Island Landfill and two (2) to the Recyclery at Newby Island; and

WHEREAS, the City of Milpitas Odor Complaint Hotline has received 678 odor complaints in calendar year 2014, 156 odor complaints just in the month of December 2014, 394 odor complaints in the month of January 2015, and 110 odor complaints in the month of February 2015; and

WHEREAS, citizens from Milpitas have testified at numerous public meetings and complained of the odor problem, stating their belief that the cause of these obnoxious odors is Newby Island, that many are of the opinion that numerous health-related conditions have been caused by the ongoing odors from Newby Island, and that such odors constitute a risk to public health and safety.

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. That the operational activities taking place at Newby Island have an adverse and negative effect on the Milpitas community, mainly resulting in chronic odor emissions blanketing the Milpitas community, its private properties, parks and public spaces on an ongoing basis, and those activities and the property upon which they are located within the City of San Jose are therefore hereby declared a public nuisance.

3. That issuance of the PD Permit PD14-014, currently pending before the San Jose Planning Commission would constitute an environmental impact as a result of the odors created at the Newby Island site, as found herein, and will cause an unacceptable negative effect on adjacent properties, namely on all public and private properties within the City of Milpitas.

4. That the aforementioned Newby Island property, located in the City of San Jose on property to the west of the Milpitas border and adjoining the City of Milpitas border, which constitutes a public nuisance should be subject to an odor study to determine which activities are the specific sources of odor from the Newby Island site so that appropriate remediation can be crafted for any and all odor causing activities at Newby Island.

5. That BAAQMD, as a primary regulatory agency regarding odors at Newby Island, put in place sufficient regulatory reporting requirements and restraints to abate odors from Newby Island and to maintain an odor-free condition. To achieve this result, BAAQMD should participate in the aforementioned odor study and assure its credibility and implement its findings in creating future restrictions and enforcement.

6. That San Jose as the Lead Enforcement Agency (LEA) regarding the Solid Waste Permit at Newby Island place additional regulatory requirements and restraints to abate odors from Newby Island and regularly report to the public its inspections, investigations and findings regarding compliance with law at Newby Island.

7. The City Council directs the City Clerk to forward a copy of this Resolution to the City of San Jose Planning Commission, the City of San Jose LEA, Republic Industries, BAAQMD and CalRecycle.

PASSED AND ADOPTED this _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: APPROVED:

_____ _____

Mary Lavelle, City Clerk Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____

Michael J. Ogaz, City Attorney

Engineering Weekly Report
March 16, 2015

Utility Engineering Updates:

Water Program:

- The State Water Resources Control Board (SWRCB) adopted additional emergency regulations relating to the drought and water conservation on March 17 – see attached media announcement. Staff will prepare an ordinance for adoption.
- Staff attended a regional retailer coordination meeting at SCVWD on March 18. 2015.

Urban Runoff Program: Staff attended the monthly SCVURPPP coordination meeting.

Solid Waste Program: Staff attended the Bay Area Air Quality Management District Board Meeting on March 16 to hear a presentation on the Milpitas Area Odor Issue (see attached power point presentation). BAAQMD staff noted they have issued 3 Public Nuisance Violations to Newby island Landfill and 2 to the Recyclery. Staff identified potential odor sources, continue to investigate odor complaints, will review the complaint process, and will amend their odor regulations. Staff will conduct a public hearing in Milpitas on April 23.

Montague Station to Close Temporarily for VTA's BART Silicon Valley Project Construction
Source: VTA
Beginning Monday, March 23, 2015, the Montague Light Rail Station in Milpitas will be completely closed for approximately five months. Modifications will be made to the station to accommodate the new pedestrian overcrossing over Capitol Avenue to the future Milpitas BART Station.
View a video with details at www.MassTransitmag.com/12053931

During the station closure, a shuttle will operate approximately every 15 minutes (same headway as light rail) between Capitol Avenue near the Montague Light Rail Station and Great Mall/Main Transit Center. Scheduled hours of operation for the shuttle are:

•Weekdays from 6 a.m. to 11 p.m.
•Saturdays from 6 a.m. to 10 p.m.
•Sundays from 7 a.m. to 9 p.m.

Construction activities during the five months will include the reconstruction of the existing stairs, elevator modifications, installation of a new escalator and construction of a deck connecting the bridge to the future Milpitas BART Station. When the station reopens in fall 2015, riders will be able to use the new station stairs; however the new escalator and the pedestrian overcrossing to the Milpitas BART Station will be completed in a later phase of construction. Once BART opens, the Milpitas Station will be served by two lines providing access to the entire BART system. The station campus will feature a bus transit center with connections to VTA, private shuttles, passenger drop-off/pick-up areas, parking facilities with ground floor retail, and convenient bicycle and pedestrian connections and storage.
VTA has already reached the half way mark of construction on this major transportation improvement, the largest in Santa Clara County's history. The project is ahead of schedule with planned service to begin as early as fall 2017.

Advanced communications about the closure include rider notifications, directional signage to shuttle stops, station platform signage, social media, outreach to surrounding businesses and residents, and VTA Ambassadors will be available days before the closure to answer questions. For more information please visit vta.org/bart/milpitas, email vtabart@vta.org or call our project hotline at 408-934-2662.

*16A

AMENDMENT NO. 1 TO THE AGREEMENT
WITH TED FARR FOR
EMERGENCY MEDICAL SYSTEM CONSULTING SERVICES

This Amendment is entered into this 7th day of April, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Ted S. Farr,** an individual (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into a Consulting Services Agreement on July 1, 2014 in the amount of Nineteen Thousand Nine Hundred and Twenty Dollars ($19,920) for Emergency Medical System (EMS) consulting services to develop policies, procedures and reporting to assure best practices patient care and comply with Santa Clara County EMS QA/QI requirements ("Agreement"); and

WHEREAS, the parties now desire to expand the scope of services of the original Agreement to incorporate additional related services in the not-to-exceed amount of Fifteen Thousand Dollars, ($15,000);

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

1. Section 2 entitled "COMPENSATION" is amended in its entirety to read as follows:

"City hereby agrees to pay Consultant a guaranteed maximum price not to exceed Thirty-Four Thousand Nine Hundred and Twenty Dollars ($34,920) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any

pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement."

2. EXHIBIT A entitled "SCOPE OF SERVICES" is amended to include the attached Addendum 1, incorporated fully herein.

3. CONSULTANT agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "INSURANCE REQUIREMENTS" of the Agreement, between CONSULTANT and the CITY. CONSULTANT shall provide the CITY with renewal certificates of the current policies upon expiration of the current policy without any gap in coverage.

4. All other provisions of the Agreement not amended by this Amendment No. 1 shall remain in full force and effect.

This Amendment is executed as of the date written above on page one.

APPROVED BY:

CITY OF MILPITAS

_____
Thomas C. Williams, City Manager

CONSULTANT

_____
Ted S. Farr, Emergency Services Consultant

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

_____
Rick Frawley, Battalion Chief

Consulting Services Addendum 1

Implement Santa Clara County EMS Data System integration for Milpitas Fire Department

Develop policy, procedures, software, and equipment recommendations for EMS Information Management and Reporting requirements in compliance with contractual obligations for County EMS Documentation Policies and Procedures.

- Develop Support Documentation for purchase of devices, software, warranties, and support for Bedside Data Collection Project. Once completed, assure the data collection capabilities and reporting functionality will meet City, County, and State documentation requirements.
- Assure department internet connectivity is sufficient for Tablet "Device to Device" communications and access to the County EMS Server.
- Participate in City CAD Development Committee to assure integration with Department Information Systems

Assure that peripheral devices used by Milpitas in support of the Santa Clara County EMS Data System can upload data to Image Trend Software in a "realtime" environment and store Peripheral Data for Quality Assurance Process and records retention

- Develop policy, procedure, and software recommendations to support Physio Control Cardiac monitors used by the Fire Department including purchasing support for Phone Modems for Cardiac Monitors. This includes internet connectivity plans for the Cardiac Monitors.
- Research, develop, and provide oversight for purchasing software and data storage in support of Physio Control products. Code Stat software provides monitor and data from cardiac arrest events that can't be achieved in any other way.

Manage the transition to the Browser Based version of Image Trend anticipated in Spring 2015

- Assure that uniform software and access to templates and websites for Tablets and Desktops use by Milpitas Fire
- Revise EMS Documentation Procedures incorporating Image Trend procedures and Data Reporting
- Provide documentation and instruction for common procedures in the software
- Test all procedures and practices prior to the "Go Live" Date for the department
- Provide access to department users for support and help with completing records.
- Provide Training to all Department Members who use the Image Trend Software in the EMS Environment
- Provide Follow up to assure documentation meets requirements established in Santa Clara County Policy 309 and Policy 500

Develop Quality Assurance Processes for Milpitas utilizing Image Trend Data

- Develop and implement Peer Review Process for evaluating Prehospital Care Records
- Develop, perform and report quality assurance processes in compliance with Santa Clara County EMS and patient care goals established by Milpitas Fire

Estimated hours for ePCR Upgrade and Transition

Project	Hours
Tablet Computers for Bedside Data Collection • Tablet Purchase, Configuration, and Data Plan • Develop Support Documents and Procedures • Procedures and Documents for Back up System • Testing and problem resolution	65
Physio Control- • Phone Modem and Data Plan • Code Stat and LifeNet purchase • Cardiac Monitor configuration and testing	20
SCC EMS Data Committee • Develop configuration for Santa Clara EMS Data System	15
User Group Training • Field Data Capture and Transfer- 8 hours per Company • ePCR Completion and Post- 8 hours per Company • Peer Review Training- 12 hours per member	60
User Suppoprt • Phone and Online support for users	15
Total Hours Estimated for Upgrade and Transition	175

Tentative Dates for Image Trend Training

- March 24-27
- April 20-24
- May 19-22
- June 22-25

*16C

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
☒ Budget Appropriation	100-3578	$ 53,575	100-812-4237 100-812-4922	$ 15,000 38,575
☐ Budget Transfer				

Explain the reason for the budget change:

Background: The City of Milpitas is among several other Santa Clara County cities to receive a grant from Santa Clara County to implement its mandatory Comprehensive EMS Patient Care Data System. System implementation must be completed by July 1, 2015. The deployment and training requirements related to the system implementation must be incorporated in the City's EMS QA.QI policies and procedures. As such, these additional and related consulting services are necessary to complete the project in a timely manner and assure continuity in the quality of the work product.

This project will adhere to the requirements which are mandated in Santa Clara County Prehospital Care Policy 309 - Comprehensive EMS Patient Care Data System. The implementation of the patient care data system will require the purchase and implementation of patient bed side capture computer devices will allow for a unified patient record from the point of initial contact by Milpitas Fire Department resources through transport and eventually to the receiving hospital facility. Additionally, funds will be applied to the transmission and capture of cardiac monitor information for critical patients.

A contractor will assist in the deployment and training required for this project. The City entered into a consulting services agreement with Ted S. Farr on July 1, 2014 in the amount of $19,000 to provide Emergency Medical System consulting services. These services consisted primary of developing policies, procedures and reporting to assure best practices patient care and compliance with Santa Clara County EMS QA.QI. Staff is requesting the City Council to approve Amendment No. 1 to increase the compensation in the amount of $15,000 for a total contract amount of $34,000 to assist in completing the implementation of the countywide Comprehensive EMS Patient Care Data System.

The total amount funded by Santa Clara County Emergency Medical Services (EMS) trust fund for this project is $53,575.04. Expenditure of the funds will be directed to the following areas:

- Tablet computers with peripherals ($15,509.30)
- Cardiac monitor modems with peripherals ($10,910)
- Data plans for tablet computers and modems ($5,520)
- Contractor services for project implementation and training ($15,000). Compensation for additional services are funding entirely from the Santa Clara County grant funding for implementing its countywide Comprehensive EMS Patient Care Data System
- Reserve cardiac monitor peripheral equipment to support longevity of the program ($6,635.74)

Fiscal Impact: None. Compensation for equipment purchases, data plans, and additional services are funded entirely from the Santa Clara County grant for implementing its countywide Comprehensive EMS Patient Care Data System

Recommendation:

1. Approve Amendment No. 1 to the Consultant Agreement with Ted S. Farr in the additional compensation amount of Fifteen Thousand Dollars ($15,000) for implementation of the countywide Comprehensive EMS Patient Care Data System.
2. Appropriate funding to the Fire Department's operating budget in the amount of $53,575.04.

☒ **Check if City Council Approval required.** **Meeting Date**: April 7, 2015

Requested by:	Robert Mihovich, Fire Chief	**Date:** March 27, 2015
Reviewed by:	**Finance Director:**	**Date:** 3/27/15
Approved by:	**City Manager:**	**Date:**
Date approved by City Council, if required:		**Confirmed by:**

FI/24786/V

Form 30-222 (Rev. 1/92)

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
MAZE & ASSOCIATES ACCOUNTANCY CORPORATION CERTIFIED PUBLIC ACCOUNTANTS**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and MAZE & ASSOCIATES ACCOUNTANCY CORPORATION, a California corporation ("Consultant") as of April 7, 2015.

AGREEMENT

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

1.1 Term of Services. The term of this Agreement shall begin on the date first noted above and shall end on January 31, 2020, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.

1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant for all services to be performed the following total maximum price not to exceed under this Agreement:

Total All-incllusive Maximum Price for 2014-15 Audit: $82,795
Total All-incllusive Maximum Price for 2015-16 Audit: $85,486

Total All-incllusive Maximum Price for 2016-17 Audit: $88,264
Total All-incllusive Maximum Price for 2017-18 Audit: $91,132
Total All-incllusive Maximum Price for 2018-19 Audit: $94,093

Total 5 year contract not to exceed $441,770.

City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's audit services pursuant to the scope of services further described in Exhibit A, including salaries and benefits of employees and related expenses of Consultant. Hourly rates for personnel performing services are shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement. Fees for additional services required beyond the original scope of services shall be negotiated based upon the billable hourly rates included in Exhibit B.

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

- Invoice number;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- Description of work product deliverables included in the current invoice;
- For each milestone task, provide a brief description of work performed during the current billing cycle and tasks to be completed in the next billing cycle, along with current invoice reimbursable and anticipated reimbursable expenses for next billing cycle;
- At the City's option, invoices shall include the total number of hours of work performed under the Agreement by Consultant and each employee listed in Exhibit B performing services hereunder with an estimate of the time necessary to complete the remaining work described in Exhibit A;
- The Consultant's signature.

2.2 Deleted.

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

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed contract amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price, in detail for performing this additional work.

2.4 **Hourly Fees.** When required beyond the original scope of services, fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

2.5 **Reimbursable Expenses.** Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

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

2.7 **Payment upon Termination.** In the event that the City terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

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

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

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

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

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City, City of Milpitas and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

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

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in

an amount not less than ONE MILLION DOLLARS ($1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

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

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

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

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

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all

losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

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

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

Section 10 MISCELLANEOUS PROVISIONS.

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

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

10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so

adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 **No Implied Waiver of Breach**. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by Emma Karlen, Assistant City Manager/Director of Financial Services (or her designee/successor) who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Amy Meyer
Vice President
Maze & Associates, a Professional Corporation
3478 Buskirk Avenue Suite 215
Pleasant Hill, CA 94523

Any written notice to the City shall be sent to:

Emma Karlen, Assistant City Manager/Director of Financial Services
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Thomas C. Williams, City Manager

APPROVED AS TO CONTENT:

Emma Karlen, Assistant City Manager/Director of Financial Services

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

CONSULTANT:

MAZE & ASSOCIATES ACCOUNTANCY CORPORATION

Amy Meyer, Vice Principal

3478 Buskirk Ave., Suite 215
Pleasant Hill, CA 94523
Telephone: (925) 930-0902
E-mail: amym@mazeassociates.com

94-2590179
Taxpayer Identification Number

City of Milpitas Business License Number

EXHIBIT A

SCOPE OF SERVICES

Consultant to provide audit services that include preparing a Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2015 and each of the subsequent years, June 30, 2016 through 2019. The City plans to submit the CAFR to the Government Finance Officers Association (GFOA) for review as a part of their Certificate of Achievement for Excellence in Financial Reporting program.

The audit shall be performed in accordance with generally accepting auditing standards as set forth by the American Institute of Certified Public Accountants, the standards for financial audits set forth in the U.S. General Accounting Office's Government Auditing Standards (2007), the provisions of the Single Audit Act Amendments of 1996 and the provisions of U.S. Office of Management and Budget (OMB) Circular A-133 Audits of State and Local Governments and Non-Profit Organizations.

Consultant shall perform the following tasks.

1. Shall perform an audit of all funds for the City of Milpitas. The audit will be conducted in accordance with generally accepted auditing standards in the United States of America and *Government Auditing Standards*, issued by the Comptroller of the United States. **The City's Comprehensive Annual Financial Report (CAFR) will be prepared and word processed by the audit firm.** The audit firm will render their auditors' report on the basic financial statements which will include both Government-Wide Financial Statements and Fund Financial Statements. Consultant shall also apply limited audit procedures to Management's Discussion and Analysis (MD&A) and required supplementary information pertaining to the General Fund and each major fund of the City.

2. Shall prepare an audited financial statement for Milpitas Economic Development Corporation. The Corporation (EDC) is a nonprofit public benefit corporation incorporated on March 7, 2011 to administer redevelopment and economic development projects within the communities of Milpitas and provide redevelopment advisory services to the City of Milpitas. Consultant shall also prepare the Federal and California Tax Forms for the Economic Development Corporation.

3. Shall perform a single audit on the expenditures of federal grants in accordance with OMB Circular A-133 and render the appropriate audit reports on Internal Control over Financial Reporting based upon the audit of the City's financial statements in accordance with *Government Auditing Standards* and the appropriate reports on compliance with Requirements Applicable to each Major Program, Internal Control over Compliance and on the Schedule of Expenditures of Federal Awards in Accordance with OMB Circular A-133. The single audit report will include appropriate schedule of expenditures of federal awards, footnotes, findings and questioned costs, including reportable conditions and material weaknesses, and follow up on prior audit

findings where required. If the City does not meet the minimum requirements to necessitate a single audit, the fees shall be adjusted accordingly. In fiscal year 2014, one program U.S. Department of Housing and Urban Development Community Development Block Grant was tested. There were no single audits findings noted.

3. Shall perform agreed-upon auditing procedures pertaining to the City's GANN Limit (Appropriations Limit) and render a letter annually to the City regarding compliance.

4. Shall issue a separate report Memorandum of Internal of Control and Required Communications that includes recommendations for improvements in internal control, accounting procedures and other significant observations that are considered to be non-reportable conditions.

5. Periodically, the City receives Transportation Development Act (TDA) funds (Article 3 Bikeway Program) from the Metropolitan Transportation Commission for bicycle and pedestrian improvements. Whenever such funds are received (or expended by the City) an audit is required. If funding is received during the contract period, an audit of the TDA activity will be required including an opinion of fair presentation in accordance with GAAP and compliance with applicable program guidelines. If the City does not meet the minimum requirements to necessitate an audit, the fees shall be adjusted accordingly.

6. If required/requested, Consultant shall perform:

   a. an audit of and prepare basic financial statements for the Milpitas Public Financing Authority. The Authority was organized to provide assistance to the City and Redevelopment City in financing public improvements for the benefit of the residents of the City. The Authority has not had any activity in the last five years and does not anticipate in the contract year;
   b. an agreed upon procedure review for the solid waste contracted hauler's compliance with the franchise agreement. See Appendix C for the excerpts of the terms of the agreed upon procedure from the franchise agreement.

7. Irregularities and Illegal Acts. Consultant shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties:

   Thomas Williams, City Manager
   Mike Ogaz, City Attorney
   Emma C. Karlen, Assistant City Manager / Director of Financial Services

8. Working Paper Retention and Access to Working Papers
   All working papers and reports must be retained, at the auditor's expense, for a minimum of three (3) years after issuance of the audit report, unless the firm is notified in writing by the City of Milpitas of the need to extend the retention period. The auditor will be required to make working papers available to the City of Milpitas, or

any government agencies included in the audit of federal grants. In addition, Consultant shall respond to the reasonable inquiries of successor auditors and allow the successor auditors to review working papers relating to matters of continuing accounting significance.

KEY MILESTONES FOR DELIVERABLES (2015)

Schedule for the 2015 Fiscal Year Audit (similar schedules will be developed in subsequent years)
Each of the following should be **completed** by the auditor **no later than** the dates indicated: However, it is the objective to the City to have the final reports on October 26, 2015 and to present the audit reports to Council on November 17, 2015 and the EDC tax return filed timely.

DELIVERABLES	MILESTONE DATES
1. Entrance conference	March, 2015

The purpose of this meeting will be to discuss any prior audit problems and the interim work to be performed. This meeting will also be used to establish overall liaison for the audit and to make arrangements for work space and other needs of the auditor. Consultant shall provide both a detailed audit plan and a list of all schedules to be prepared by the City of Milpitas for interim.

2. Interim work	May 26 – June 5, 2015
3. Interim exit conference	June 5, 2015

The purpose of this meeting will be to summarize the results of the preliminary tests of the key internal controls and to discuss a written report of items of concern or other matters to be tested.

4. Detailed Audit Plan	June 5, 2015

Consultant shall provide both a detailed audit plan and a list of all schedules to be prepared by the City of Milpitas for the final phase of the audit.

5. Entrance conference to commence Year-end audit work	September 8, 2015
6. Fieldwork	September 8 – September 25, 2015
7. Exit conference	September 28, 2015

The purpose of this meeting will be to summarize the results of the field work and to review significant findings. Consultant shall have drafts of the audit reports and recommendations to management available for review by the Finance Director by this date. Please also provide a listing of outstanding issues that have not been resolved during the audit.

8. Draft Reports to be reviewed by City Staff — September 28 - October 9, 2015

   The Director of Financial Services and staff will complete their review of the draft reports within one business week after receipt of the report described in paragraph seven (7) above. During that period, the Consultant shall be available for any meetings that may be necessary to discuss the audit reports.

9. City to provide the following reports to auditor — October 12, 2015
   Report Draft changes
   Management Discussion and Analysis
   Transmittal Letter
   Responses to all the outstanding items

10. Consultant provides all final reports to City for final review — October 19, 2015

    Once all issues for discussion are resolved, the final signed report shall be delivered to the Director of Financial Services within five (5) working days. The complete and final printed report will be delivered to the City of Milpitas by October 26, 2015.

11. Consultant to issue opinions for all the following reports: — October 26, 2015

    Camera-Ready CAFR *(1 Camera Ready Color Copy Unbound)*
    Memorandum of Internal Control and Require Communications *(10 bound and 1 PDF)*
    Single Audit Report *(10 bound and 1 PDF)*
    Report on the Gann Limit Calculation *(10 bound and 1 PDF)*
    Transportation Development Act Report *(10 bound and 1 PDF)*
    Milpitas Public Financing Authority (*10 bound and 1 PDF)*
    Milpitas Economic Development Corporation (*10 bound and 1 PDF)*

12. CAFR Presentation to Council — November 17, 2015
13. Milpitas Economic Development Corporation Tax Return — January 31, 2016

EXHIBIT B
COMPENSATION SCHEDULE

Proposed Engagement Segments and Budget

	Budgeted Hours						
	Partner						
Audit Activities	Engagement	Review	Manager	Supervisor	Associates	Admin.	Total
Planning & Budget/Confirms/Checklists	2.00		4.00	16.00	4.00		**26.00**
SAS 99 & SAS 104-111 Risk Assessment	2.00		2.00	12.00	2.00		**18.00**
Minutes-Resolutions				8.00			**8.00**
Report	4.00	4.00	8.00	16.00	8.00	4.00	**44.00**
Supervision/Review	16.00		40.00	60.00			**116.00**
Conferences & Meetings	2.00		2.00	8.00			**12.00**
Management Letter	1.00		2.00	2.00	1.00	1.00	**7.00**
MD&A Review				1.00	2.00		**3.00**
Accounting Issues Memo	1.00		1.00	4.00	2.00		**8.00**
Analytical Review	4.00		2.00	4.00	2.00		**12.00**
Adjustments					1.00		**1.00**
Internal Control Evaluation				2.00	16.00		**18.00**
Information Systems Review			4.00	1.00			**5.00**
Cash & Investments					40.00		**40.00**
Revenue/Receivables					32.00		**32.00**
Interfunds					8.00		**8.00**
Notes/Loans Receivable					16.00		**16.00**
Capital Assets & Capacity Rights					32.00		**32.00**
Disbursements/Payables					32.00		**32.00**
Payroll/Accrued Liabilities					24.00		**24.00**
Unearned/Unavailable Revenue & Deposits					6.00		**6.00**
Long-Term Debt					24.00		**24.00**
Fund Balance & Net Position				1.00	4.00		**5.00**
Commitments & contingencies				3.00	6.00		**9.00**
PERS/Pension & OPEB					10.00		**10.00**
Self Insurance/Claims					6.00		**6.00**
Budget					2.00		**2.00**
Journal Entries				1.00	8.00		**9.00**
Successor Agency Disclosures	1.00		1.00	1.00	6.00		**9.00**
Subtotal - Comprehensive Annual Financial Report & Management Letter	33.00	4.00	66.00	140.00	294.00	5.00	542.00
Gann Limit Review Report			1.00	1.00	3.00	1.00	**6.00**
Single Audit (Per Tested Program)	2.00		4.00	6.00	32.00	1.00	**45.00**
Milpitas Economic Development Corporation Financial Statements	1.00		2.00	4.00	24.00		**31.00**
Milpitas Economic Development Corporation Tax Returns		1.00	2.00		4.00		**7.00**
Milpitas Public Financing Authority Financial Statements	1.00		2.00	4.00	20.00	1.00	**28.00**
TDA Article 3 Audit	1.00		2.00	4.00	16.00	1.00	**24.00**
GRAND TOTAL	**38.00**	**5.00**	**79.00**	**159.00**	**393.00**	**9.00**	**683.00**
OPTIONAL SERVICES:							
Agreed Upon Procedures (Appendix C - Section 8 ONLY)	1.00		2.00	4.00	24.00	1.00	**32.00**
Agreed Upon Procedures (Appendix C - Section 9 ONLY)	1.00		2.00	4.00	16.00	1.00	**24.00**
Agreed Upon Procedures (Appendix C - Section 8 and Section 9 BOTH SECTIONS)	2.00		4.00	6.00	40.00	1.00	**53.00**

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES

FOR THE AUDIT OF THE JUNE 30, 2015-2019 FINANCIAL STATEMENTS

Service	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019
City Audit and Related Reports	$62,745	$64,784	$66,889	$69,063	$71,308
GANN Limit Review Report	590	609	629	649	670
Single Audit and Related Reports (Price Per Program*) **City will pay for the number of the programs that are required to be tested.*	4,695	4,848	5,006	5,169	5,337
Milpitas Economic Development Corporation Financial Statements	3,110	3,211	3,315	3,423	3,534
Milpitas Economic Development Corporation Tax Return	950	981	1,013	1,046	1,080
Milpitas Public Financing Authority Financial Statements	2,835	2,927	3,022	3,120	3,221
TDA Article 3 Audit	2,495	2,576	2,660	2,746	2,835
Total for Fiscal Year (not-to-exceed)	$77,420	$79,936	$82,534	$85,216	$87,985
Optional Service Agreed Upon Procedures (Appendix C - Section 8 ONLY) **(A)**	3,175	3,278	3,385	3,495	3,609
Optional Service Agreed Upon Procedures (Appendix C - Section 9 ONLY) **(A)**	2,495	2,576	2,660	2,746	2,835
Optional Service Agreed Upon Procedures (Appendix C - Section 8 and Section 9 BOTH SECTIONS)	5,375	5,550	5,730	5,916	6,108
Total for Fiscal Year (not-to-exceed all inclusive price including optional service AUP both sections 8&9)	$82,795	$85,486	$88,264	$91,132	$94,093

Total All-inclusive Maximum Price for 2014-2015 Audit	$ 82,795
Total All-inclusive Maximum Price for 2015-2016 Audit	$ 85,486
Total All-inclusive Maximum Price for 2016-2017 Audit	$ 88,264
Total All-inclusive Maximum Price for 2017-2018 Audit	$ 91,132
Total All-inclusive Maximum Price for 2018-2019 Audit	$ 94,093

Auditors Standard Hourly Billing Rates						
POSITION TITLE		**2014/2015**	**2015/2016**	**2016/2017**	**2017/2018**	**2018/2019**
Partner		$300	$310	$320	$330	$340
Manager		155	160	165	170	175
Supervisory Staff		115	120	125	130	135
Associates		85	90	95	100	105
Office		65	70	75	80	85

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
GREATLIKE MEDIA**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City"), and Modern Day Marketing, Inc. dba GreatLike Media ("Consultant") **as of April 7, 2015.**

AGREEMENT

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

1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall **end on August 31, 2015**, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.

1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.

1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A.2 shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a guaranteed maximum price not to exceed Twenty-Five Thousand Dollars ($25,000) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

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

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

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

2.4 **Lump Sum Payment.** Fees for work performed by Consultant paid on upon completion of each task to satisfaction of City and shall not exceed the amounts shown on Exhibit B.

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

2.6 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant

for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

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

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

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

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

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

4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Consultant may rely on a self-

insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each

of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such

deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

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

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

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

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

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the

actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Consultant No Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement

and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

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

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

Section 10 MISCELLANEOUS PROVISIONS.

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

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

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

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

10.4 **No Implied Waiver of Breach**. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by City Engineer who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Buddy Klovstad, Princpal
GreatLike Media
12711 Newport Avenue, Suite F
Tustin, CA 92780
bklovstad@greatlike.com
(949) 342-5419

Any written notice to City shall be sent to:
Leslie Stobbe, Public Information Specialist
455 East Calaveras Boulevard
Milpitas, California 95035
lesliestobbe@ci.milpitas.ca.gov
(408) 586-3352

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

_____

Thomas C. Williams, City Manager

_____

Buddy Klovstad – Partner

Taxpayer Identification Number

APPROVED AS TO FORM:

_____

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

_____

Leslie Stobbe, Public Information Specialist

EXHIBIT A.1

SCOPE OF SERVICES FOR AN ONLINE AWARENESS CAMPAIGN

Under the Municipal Stormwater Permit, the City of Milpitas submits annual reporting about actions taken to reduce litter and other pollutants carried by urban runoff into local creeks and South San Francisco Bay and implements a state mandated Long-Term Trash Load Reduction Plan (Plan). The Public Information and Participation component of the permit requires outreach that carry messages to raise awareness about littering, urban runoff, and storm drain debris.

On April 15, 2014, the City Council directed staff to include $8,500 for increased code enforcement and $25,000 for an online advertising campaign in the FY2014-15 proposed budget and to begin implementation of the City's Plan. After a selection panel of City of Milpitas and Sunnyvale staff reviewed consultant proposals and websites, The City has retained Consultant under this Agreement to assist in an online campaign that targets residents and people working in and visiting Milpitas. Advertising would be designed to engage Internet browsers with a click and registration for more information, and a possible free entry into a contest for giveaways to build a data base of engaged browsers. Online methodologies will also track the mobile campaign and gauge public interest. The campaign is slated to begin in May, 2015 and is expected to run through August, 2015.

Consultant shall perform the following tasks:

Set Objectives – Establish objectives for a performance-based campaign to gauge success including, but not limited to, generating mobile opt-ins, number of registrations, and number of coupons.

Campaign Setup – Establish standard administrative tasks should a giveaway be offered, such as official rules, legal compliance (if any), and alternate means of entry (if needed). Determine how to test all variable elements before going live.

Opt-in and Opt-out for Contact Information – Establish method to manage data base of community members desiring more or no additional contact from the City.

Tracking & Attribution – During the setup process, Consultant shall establish methods to track the mobile campaign and attribute results to the marketing sources. Two attribution methodologies will be used to ensure coverage in tracking installs and events:

- Unique Identifier Matching – matching unique identifiers from the install to a clock to enable 1:1 matching of click to install or in-app event where identifiers can be passed app to app, and;
- Device Fingerprinting – basic information pulled from a user's device headers to connect a user from a click to app install or event.

Execution Flow – While planning the campaign, Consultant shall map out the intended flow of the campaign to anticipate the behavior and funnel for the browsers with the intention of using cross-channel components.

Creative – Provide a design and layout for an online campaign to fit size of screen limitations and the fragmentation of mobile devices. Consultant shall work with City Staff to determine online designs.

Data Management – Consultant shall provide guidance to answer data questions about what type of data is to be gathered, creating mobile profiles, how to segment the mobile audience, what information to ask of participating browsers, and how to setup tracking links to properly track a user session.

At conclusion of campaign, Consultant shall provide City staff with a report outlining the above information and listing contact information of participating browsers.

Reporting & Analysis – Consultant shall provide reporting and analysis to demonstrate the return on investment and possible future opportunities. This shall include an accounting of impressions and clicks. The number of times the campaign ad was displayed, number of times browser clicked on the ad, percentage of ad impressions clicked on, percentage of clicks that resulted in a conversation, cost of advertising based on a browser taking a defined action, and cost of advertising based on the number of clicks received.

EXHIBIT A.2

Specific personnel with titles performing consultant services**:**

Buddy Klovstad – Partner / Social Media /Ads

Greg Solorio – Partner – Programming /SEO

David Kanady – Graphic Designer

Emma Castleton – Graphic Designer

Alyssa Chavez – Content Creation

EXHIBIT B

COMPENSATION SCHEDULE

Planning Stages • Set Objectives, Campaign Setup, Opt-in and Opt-out, Tracking & Attribution, Execution Flow, Social Media Integrations, Email Marketing Set Up	$6,000
Creative / Design Concepts / Copy Writing	$8,500
Campaign Management	$5,250
Reporting & Analysis	$5,250
TOTAL	$25,000

EXHIBIT C

INSURANCE DOCUMENTS

AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE

This Agreement is made by and among the Cities and Towns of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Morgan Hill, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale (CITIES) and the County of Santa Clara (COUNTY) on the _____ day of _____ 2015. The term CITIES may refer to CITIES collectively or individually.

RECITALS

WHEREAS, pursuant to Public Resources Code Section 41901, a city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing an integrated waste management plan; and

WHEREAS, the Board of Supervisors established the Countywide AB939 Implementation Fee effective July 1, 1992 to fund local costs of preparing, adopting, and implementing integrated waste management plans and programs; and

WHEREAS, the Recycling and Waste Reduction Commission of Santa Clara County has determined that a Countywide AB939 Implementation Fee (Fee) is necessary, pursuant to Public Resource Code 41901, to assist in funding the costs of preparing, adopting and implementing integrated waste management plans and programs in the fifteen cities and the unincorporated area of the county; and

WHEREAS, the Fee shall be imposed on each ton of waste landfilled or incinerated within the County; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County; and

WHEREAS, state law requires jurisdictions to plan and implement household hazardous waste (HHW) services; and

WHEREAS, HHW programs provide household hazardous waste management services to residents of Santa Clara County and are necessary services to enable jurisdictions to meet the requirements of state law; and

WHEREAS, jurisdictions in Santa Clara County desire to provide safe, convenient, and economical means for residents to properly dispose of household hazardous wastes in an environmentally safe manner in order to avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard. These wastes include, but are not limited to, common household products such as household cleaning products, spot remover, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, fluorescent lamps, and batteries; and

WHEREAS, the County will collect the Fee on behalf of the fifteen cities and the unincorporated area and will apportion the Fee according to the terms of this Agreement.

NOW, THEREFORE, CITIES and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which the COUNTY will collect and distribute the Fee of $4.10 per ton in Fiscal Years 2016, 2017 and 2018 of waste to be disposed. The Fee is divided into two parts: 1) a Program Fee of $1.50 per ton to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan in the fifteen cities and the unincorporated area of the County; and 2) a Household Hazardous Waste (HHW) Fee of $2.60 per ton to provide funding to implement the Countywide HHW Program. The Program Fee will be allocated among jurisdictions as described in Exhibit B, attached hereto and incorporated herein. The HHW Fee will be allocated to the COUNTY, CITIES, and Countywide HHW Program and participating jurisdictions as described in Exhibit C, attached hereto and incorporated herein. The Fee shall be imposed on each ton of waste landfilled or incinerated within the County; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County. Non-Disposal Facilities are defined as those facilities included in the County of Santa Clara Non-Disposal Facility Element (and subsequent amendments to that Element) and are listed in Exhibit A, attached hereto and incorporated herein.

2. SERVICES PROVIDED BY COUNTY

COUNTY will collect and distribute the Fee. COUNTY will collect the Fee from landfills and non-disposal facilities listed in Exhibit A, and any landfill or non-disposal facility subsequently permitted, on a quarterly basis using data from tonnage reports filed by landfill and non-disposal facility operators with the County Recycling and Waste Reduction Division. The COUNTY shall require each landfill and non-disposal facility to submit required payment, documentation of tonnages disposed, and state-mandated Disposal Reporting System Reports on a quarterly basis, within 45 days of the end of each calendar quarter. Late submissions and/or payments shall be subject to a late filing penalty and delinquent penalties. COUNTY will research Santa Clara County tonnage reported to COUNTY by landfills outside the COUNTY in significant amounts to determine the identity of the hauler. That hauler will subsequently be billed in the same fashion subject to the same penalties as mentioned above. Collected funds and any late filing payments and delinquency penalties shall be distributed to CITIES and Countywide HHW Program based on the formula set forth in Exhibits B and C. COUNTY shall not be obligated to distribute funds that COUNTY has been unable to collect from landfill or non-disposal facility operators.

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3. ROLE OF CITIES

CITIES shall review the Disposal Reporting System Reports as prepared and submitted by the COUNTY and within 30 days of receipt shall report to COUNTY, with appropriate documentation, errors in waste allocations among jurisdictions.

4. COLLECTION AND USE OF FEE

Each ton of waste will be subject to the Fee. Best efforts will be made to prevent tonnage from being assessed a double fee (once at a non-disposal facility and again at a landfill within Santa Clara County). The Program Fee funding share paid to CITIES shall be used to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan of each of the CITIES and the unincorporated area of the COUNTY. The HHW Fee portion shall assist in funding the costs of each city's share of HHW operations.

5. INSURANCE

Each party shall maintain its own insurance coverage, through third party insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this Agreement. CITIES agree to provide evidence of such insurance to COUNTY via Certificate of Insurance or other documentation acceptable to the COUNTY upon request.

6. INDEMNIFICATION

In lieu of and not withstanding the pro rata risk allocation which might otherwise be imposed between CITIES and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree that each of the parties hereto shall fully indemnify and hold each of the other parties harmless from any claim, expense or cost, damage or liability arising out of, or in connection with, performance of its responsibilities pursuant to this Agreement and as described in Exhibit D.

Additionally, CITIES shall indemnify, hold harmless, and defend COUNTY, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses, including attorney fees and court costs, arising from any misuse of the Fee distributed to CITIES. COUNTY shall indemnify, hold harmless, and defend CITIES, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses, including attorney fees and court costs, brought by third parties based on COUNTY's sole negligence in the collection or distribution of said Fees.

7. DISTRIBUTION OF FEE

COUNTY shall distribute the Fee to CITIES and the Countywide HHW Program pursuant to the formulas described in Exhibits B and C within 45 days of receipt of landfill and non-disposal facility payments and disposal documentation required for calculation of Fee

distribution amounts. Distributions shall begin December 15, 2015, and continue quarterly through October 15, 2018.

8. PARTICIPATION IN THE COUNTYWIDE HHW PROGRAM

CITIES, at their option, may individually participate in the Countywide HHW Program by entering into the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

9. LATE PAYMENTS

If Fee payments and disposal documentation are not received from landfill or non-disposal facility operators prior to scheduled distribution of payments to CITIES and the Countywide HHW Program, payment distribution shall be calculated on a pro rata share of monies received. Upon collection, late payments and accrued delinquent penalties, if any, shall be distributed among CITIES and the Countywide HHW Program according to the formula in Exhibits B and C.

10. ACCOUNTING

COUNTY shall maintain records of all transactions related to collection, use and distribution of the Fee for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. Such records will be available for inspection upon written request by CITIES, and will include but not be limited to tonnage reports submitted by landfills and non-disposal facilities, waste stream documentation provided by cities, payments made by the landfills and non-disposal facilities to the COUNTY and by the COUNTY to CITIES, and expenditures for programmatic and overhead costs.

11. REQUEST FOR REVIEW

In the event CITIES have a dispute regarding the calculation of its share of the Fee or the distribution or use of the Fee, CITIES may request in writing a review by COUNTY within 10 days of receipt of their Fee allocation. The review shall be performed within 30 days of request and results shall be reported to CITIES in writing.

12. EFFECTIVE DATE OF AGREEMENT

This agreement is effective upon approval by all fifteen CITIES and the COUNTY.

13. AMENDMENT

This Agreement may be amended only by an instrument signed by all fifteen CITIES and the COUNTY.

14. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto.

Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

15. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2015 to June 30, 2018, or until all funds from the last quarter's Fee payments have been distributed, whichever is later. COUNTY shall bill the operators of the landfills and non-disposal facilities listed in Exhibit A for the Fee commencing with the Quarter ending September 30, 2015. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2018.

16. NOTICES

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such address as the party may designate in writing in accordance with this section.

City of Milpitas

Contact: Thomas C. Williams

Title: City Manager

Address: 455 E. Calaveras Blvd.
Milpitas, CA 95035

County of Santa Clara

Contact: Recycling and Waste Reduction Division Manager

Recycling and Waste Reduction Division

Address: 1555 Berger Drive, Suite 300

City: San Jose, CA 95112

17. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

18. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designees.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this **AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE** on the dates as stated below:

"COUNTY"

_____
Dave Cortese, President
Board of Supervisors

Date: _____

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

_____
LYNN REGADANZ Date
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

3/6/15
Michael L. Rossi Date
Deputy County Counsel

"CITY"

CITY/TOWN OF Milpitas,
A municipal corporation

By: _____

Title: City Manager

Date: _____

EXHIBIT A

LANDFILLS LOCATED IN SANTA CLARA COUNTY

Guadalupe Rubbish Disposal Site
Kirby Canyon Sanitary Landfill
Newby Island Sanitary Landfill
Zanker Materials Processing Facility
Zanker Road Landfill

NON-DISPOSAL FACILTIES AND TRANSFER STATIONS LOCATED IN SANTA CLARA COUNTY

California Waste Solutions Recycling & Transfer Station
City of Palo Alto Green Composting Facility
ECO Box Recycling, Inc.
Environmental Resource Recovery, Inc. (Valley Recycling)
Green Earth Management LLC Kings Row Recycling Facility
Green Waste Materials Facility and Transfer Station
Green Waste Recovery Facility
GreenTeam of San Jose Material Recovery Facility and Transfer Station
Guadalupe Landfill
Material Recovery Systems Facility
Mission Trail Waste Systems, Inc.
Newby Island Compost Facility
Pacheco Pass Transfer Station
Pacific Coast Recycling, Inc.
Premier Recycle Facility
Recology Silicon Valley Processing and Transfer Facility
The Recyclery at Newby Island
San Martin Transfer Station
Smurfit-Stone Recycling San Jose Facility
South Valley Organics
Stanford Recycling Center and Direct Transfer Facility
Sunnyvale Materials Recovery and Transfer Station (SMaRT Station)
Valley Recycling San Jose CDI Processing/Transfer Facility
Wood Processing Facility at Recology Pacheco Pass
Z-Best Composting Facility
Zanker Materials Processing Facility
Zanker Road Class III Landfill
Zero Waste Energy Development Company Anaerobic Digestion Facility

EXHIBIT B

FORMULA FOR DISTRIBUTION OF AB939 PROGRAM FEE

Each jurisdiction located in Santa Clara County will receive $1.50 per ton of solid waste disposed of in landfills or taken to non-disposal facilities located in Santa Clara County that originates from that jurisdiction, as documented in quarterly reports submitted by the County to the State Disposal Reporting System.

Fees collected from undocumented disposed tonnage, or tonnage originating outside of Santa Clara County, will be distributed according to each jurisdiction's percent of countywide population, according to the latest available population report issued by the California Department of Finance.

EXHIBIT C

COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE PROGRAM FEE (HHW Fee)

1. PROGRAM FUNDING SOURCE

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The HHW Fee, of $2.60 per ton, collected as part of the AB939 Implementation Fee, will be the primary source of funding for Countywide Household Hazardous Waste Collection Program (CoHHW Program) services.

Funds derived from the HHW Fee will be allocated among four types of CoHHW Program service costs as follows:

A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."

B. San Jose Facility Use Surcharge will be apportioned based on CITY's anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose.

C. Variable Cost Per Car to provide a base level service to 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."

D. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.

2. FIXED PROGRAM COST

Funds shall be distributed on a per household basis for Fixed Program Costs. This portion of the funds shall be distributed directly to the Countywide HHW Program. Fixed Program Costs funding shall be calculated at $2.47 per household in Fiscal Years 2016, 2017, and 2018. Fixed Program Costs may include, but are not limited to ten (10) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance, and union negotiated salary and benefit changes.

3. ABANDONED WASTE DISPOSAL COST

The existing unexpended non-profit abandoned waste fund balance of approximately $50,000, will fund disposal of HHW illegally abandoned at nonprofit charitable reuser organizations as defined in Public Resources Code Section 41904.

For the purposes of this agreement, PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organization as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

4. SAN JOSE FACILITY USE SURCHARGE

The San Jose Facility Use Surcharge is estimated to be $18.06 per car for Fiscal Years 2016, 2017, and 2018. The total San Jose Facility Use Surcharge for CITY will be based on CITY's participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose.

5. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County HHW Collection Facilities and Temporary Events. This portion of the funds shall be distributed directly to the Countywide HHW Program. The Variable Cost Per Car is estimated to be $68 per car for Fiscal Years 2016, 2017, and 2018. The estimated cost per car will be adjusted annually to reflect actual service costs. After fixed costs and San Jose Facility Use Surcharge are allocated on a per household basis, the variable cost per car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached, the Countywide HHW Program will use the remaining balance of funds, in cooperation with the CITIES, to increase public outreach and/or provide additional services in that jurisdiction where the level of 4% is not reached the following year.

6. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion will be allocated based on the tons of waste generated within each jurisdiction and after allocation of Fixed Program Cost, San Jose Facility Use Surcharge, and Variable Per Car Cost. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in the jurisdiction by the Countywide HHW Program, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events. CITY authorizes the

COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

7. PROGRAM FUNDING PASS-THROUGH

Annual funding calculations include HHW Fees collected on behalf of all County jurisdictions. CITIES, at their option, may participate in the Countywide HHW Program by entering into the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. CITIES not participating in the Agency Agreement will receive their pro-rata share of funding received by the COUNTY from the HHW Fee.

If CITIES not participating in the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM desire to permit residents to participate in HHW Program services on an emergency basis, then services to these residents will be provided on a cost recovery basis. A charge equal to the established rates charged by the Countywide HHW Program to Conditionally Exempt Small Quantity Generators will be billed to the CITIES. A CITIES' representative must call the Countywide HHW Program appointment line to schedule an appointment for the resident. The pro-rata share of liability will be shared as defined in Section 29 of AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM and as described in Exhibit D.

EXHIBIT D

SECTION 28 OF AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

HOLD HARMLESS AND INDEMNIFICATION

In lieu of and not withstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 25 of the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the county as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require Conditionally Exempt Small Quantity Generators ("CESQG") and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

This Agreement is made by and between the _____(CITY) and the County of Santa Clara (COUNTY) on the _____ day of _____ 2015.

RECITALS

WHEREAS, the County Board of Supervisors has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the County and participating jurisdictions will have an opportunity to safely dispose of household hazardous wastes, regardless of the specific location at which the collection has been scheduled; and

WHEREAS, the participating jurisdictions desire to provide residents with convenient opportunities to safely dispose of their household hazardous waste (HHW) in order to encourage the proper disposal of toxic products, and avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard; and

WHEREAS, the participating jurisdictions desire to provide a safe, convenient, and economical means for residents to dispose of household hazardous wastes. These wastes include, but are not limited to, common household products such as household cleaning products, spot remover, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, car batteries, mercury thermostats, fluorescent lamps, household batteries, and electronic waste. Residents of the CITY listed above will be eligible to bring HHW to any household hazardous waste collection event or facility where these wastes will be accepted for proper disposal as described below; and

WHEREAS, the participating jurisdictions desire to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2016 through FY 2018 (July 1, 2015 – June 30, 2018); and

WHEREAS, the participating jurisdictions desire to provide household hazardous waste collection services to a minimum of 4% of the households per fiscal year in each participating jurisdiction; and

WHEREAS, the County Board of Supervisors has approved a Countywide AB939 Household Hazardous Waste Fee (AB939 HHW Fee), as authorized by Public Resources Code 41901, to be collected at $2.60 in FY 2016 through FY 2018 on each ton of waste landfilled or incinerated within the county, received at any non-disposal or collection facility located within the county and subsequently transported for disposal or incineration outside of the county, collected from any location within the county by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or

incineration outside of the county, or removed from any location in the county by any person or business for disposal or incineration outside the county.

NOW, THEREFORE, CITY and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into an AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

2. PROGRAM FUNDING SOURCE

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The AB939 HHW Fee, of $2.60 per ton, collected as part of the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for CoHHW Program services.

Funds derived from the AB939 HHW Fee will be allocated among four types of CoHHW Program service costs as follows:

A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."

B. San Jose Facility Use Surcharge will be apportioned based on CITY's anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose.

C. Variable Cost Per Car provides a base level service of 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."

D. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.

The projected AB939 HHW Implementation Fee Allocation by jurisdiction is set out in Attachment A, attached hereto and incorporated herein.

3. FIXED PROGRAM COST

Fixed Program Costs shall be $2.47 per household in Fiscal Years 2016, 2017 and 2018. Estimated HHW Fixed Costs are projected in Attachment B, attached hereto and incorporated herein. Fixed Program Costs may include, but are not limited to ten (10) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

4. ABANDONED WASTE DISPOSAL COST

The existing unexpended non-profit abandoned waste fund balance of approximately $50,000 will fund disposal of HHW illegally abandoned at nonprofit charitable reuser organizations as defined in Public Resources Code Section 41904.

For the purposes of this agreement, PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organization as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

5. SAN JOSE FACILITY USE SURCHARGE

The San Jose Facility Use Surcharge is estimated to be $18.06 per car for Fiscal Years 2016, 2017 and FY 2018. The total San Jose Facility Use Surcharge for CITY will be based on CITY's participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose. Estimated San Jose Facility Use Surcharges are projected in Attachment A, attached hereto and incorporated herein.

6. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately $68 per car for Fiscal Years 2016, 2017 and 2018. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs and San Jose Facility Use Surcharge are allocated on a per household basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in a particular jurisdiction, the CoHHW Program will use the remaining balance of funds, in cooperation with the CITY that has less than 4% participation levels, to increase public outreach and/or provide additional services in that jurisdiction the following year.

7. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San Jose Facility Use Surcharge, and Variable Per Car Costs. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events.

8. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE

The Santa Clara County Recycling and Waste Reduction Division will administer the AB939 HHW Fee, as part of the existing landfill billing system. Administration and payment will be made in accordance with the AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE. Notwithstanding the foregoing, the COUNTY shall maintain records of the amount, use, and distribution of Fixed Program Cost expenditures for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. CITY may request in writing a review by COUNTY of the Fixed Program Cost records. The review shall be performed within 30 days of request and results shall be reported to participating cities in writing.

9. PROGRAM PUBLICITY

The CoHHW Program shall have available to the public a HHW brochure for distribution. The brochure will be made available at various events, including but not limited to, environmental events, community fairs. The brochure may also be distributed, upon request, to cities within the County and to County residents and businesses. The CITY shall be responsible for developing and coordinating citywide awareness of the HHW Program. The CoHHW Program shall be responsible for Countywide public education for used oil recycling. CoHHW Program public awareness responsibilities shall include, but not be limited to, the following activities:

- Serving as the formal contact to the local media such as local newspapers and television news stations;
- Providing participating jurisdictions with educational materials developed for the CoHHW Program;
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions;

- Representing the program through educational presentations at schools and businesses and attendance at community events such as local fairs and festivals; and
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.

CITY's public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to, the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication;
- Developing and distributing communications to residents for local and city newsletters, newspapers and to the electronic media;
- Providing the CoHHW Program with a copy of locally produced materials; and,
- Conducting and supporting outreach and publicity to attain the 4% goal of household participation.

10. DELEGATION OF AUTHORITY

The Board of Supervisors delegates all CoHHW Program management to the Consumer and Environmental Protection Agency. The Director of the Consumer and Environmental Protection Agency has the authority to execute all vendor contracts necessary to operate the program, to execute any necessary license agreements, to add additional HHW services provided on a cost recovery basis, to amend any contracts or agreements, and to terminate any contracts or agreements. All contracts, agreements, and amendments shall first be approved by County Counsel as to form and legality and the Office of the County Executive.

11. TEMPORARY HHW EVENTS

COUNTY shall conduct HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Temporary HHW Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at the Temporary HHW Events.

12. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

COUNTY shall conduct collection operations at two County Household Hazardous Waste Collection Facilities (CoHHWCF).

The CoHHWCFs are located at:

- ***San Martin, 13055 Murphy Avenue, San Martin***
- ***San Jose, 1608 Las Plumas, San Jose***

The CoHHWCF will operate a reuse program, offering usable materials to the public at no charge when feasible. The COUNTY shall obtain all necessary permits and

licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected.

13. SMALL BUSINESS RECYCLING AND DISPOSAL PROGRAM

COUNTY will provide services to accept hazardous waste from Conditionally Exempt Small Quantity Generators (CESQG). A CESQG is defined by federal regulation as a business that generates less than 100 Kilograms (220 lbs.) of hazardous waste or 1 Kilogram (2.2 lbs.) of extremely hazardous waste per month. Eligible businesses within the County will be allowed to bring their hazardous waste to CoHHWCF. This program will not be subsidized by participating jurisdictions. Services to businesses will be provided on a cost recovery basis, which will include program administration, on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for fee collection from participating businesses.

14. ABANDONED HOUSEHOLD HAZARDOUS WASTE

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and nonprofit charitable reusers. Abandoned HHW means HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee. Government agencies shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs.

15. NONPROFIT CHARITABLE REUSER

A Nonprofit Charitable Reuser organization as established in Public Resources Code Section 41904, is a nonprofit as defined in Section 501(c) (3) of the United States Internal Revenue Code, or a distinct operating unit or division of the charitable organization. A Nonprofit Charitable Reuser is further defined as an organization that reuses and recycles donated material and receives more than 50% of its revenues from the handling and sale of those donated goods or materials. In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the COUNTY Director of Environmental Health a request to be so designated. The Director shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the existing unexpended abandoned waste fund. Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the cost for disposal of the abandoned HHW from Nonprofit Charitable Reusers is equal to the available funds, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for

CESQGs. No additional costs shall be applied to the budget of a participating jurisdiction.

16. HOUSEHOLD HAZARDOUS WASTES ACCEPTED

HHW accepted by the CoHHW Program shall be limited to materials as defined in Health and Safety Code Section 25218, as amended from time to time, and include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, e-waste and other common hazardous consumer products.

17. WASTES NOT ACCEPTED

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from CESQGs as provided for in Section 13 of this Agreement shall be accepted.

18. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the Director of Consumer and Environmental Protection Agency. Additional services may include, but are not limited to, additional appointments (charged at the variable cost per car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional $5,000.00 to the Countywide HHW Program during Fiscal Year 2016 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

19. INFORMATION AND APPOINTMENT LINE

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 8:30 a.m. to 4:30 p.m. The information service will register residents for the Temporary HHW Events and the collections at CoHHWCF. The information service will provide information about hazardous household materials. CITY will be notified immediately if resident participation approaches a level of service that may not be supported by available funding.

20. SCHEDULING AND SITE SELECTION

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some of the jurisdictions participating in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2016 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 4% level of service. The COUNTY determines the adequate number of collection days by tracking attendance at each event.

21. OUTSIDE FUNDING

During the term of this agreement, COUNTY will seek outside funding sources to begin services that would supplement existing services such as permanent collection sites, equipment, retail take-back collection and operational funding. If funding is obtained, the Program will, at COUNTY's discretion, proceed with development of additional programs without affecting CITY's available funding allocation.

22. REGIONAL GRANT AND OIL PAYMENT PROGRAM PARTICIPATION

The CoHHW Program is hereby given permission by all participating jurisdictions to apply for future grants and the Oil Payment Program, from the California Department of Resources Recycling and Recovery (CalRecycle). The CoHHW Program will act on behalf of all participating jurisdictions, as the lead applicant and administrator. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply.

23. EMERGENCY SERVICES

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion. Attachment D sets out CITY and COUNTY responsibilities for the collection of

household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of an emergency collection event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Emergency collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The emergency collection plan is set out in Attachment D, Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from the State Department of Toxic Substances Control and will handle wastes in accordance with State law. COUNTY will bill CITY for all emergency events on a cost recovery basis and all payments shall be due COUNTY within thirty days following the receipt of the invoice.

24. PRIVATE SPONSORED EVENTS

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions and to pay for special programs such as Universal Waste collection at retail locations. The transportation, treatment and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions and the COUNTY, as described in Section 29 of this Agreement. Summary information concerning these corporate sponsored events will be included in the CoHHW Program's annual report to the participating jurisdictions.

25. INSURANCE REQUIREMENTS

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have the required insurance as outlined in Attachment E, Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contract. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program naming the COUNTY as an additional insured.

26. WASTE TRACKING AND REPORTING

COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction by March 15, 2016. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter.

27. PARTICIPATION REPORTING

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

28. HOLD HARMLESS AND INDEMNIFICATION

In lieu of and not withstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 25 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events

where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

29. TERMINATION

This Agreement may be terminated by either the COUNTY or CITY upon thirty (30) days written notice given by the terminating party.

30. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2015 to June 30, 2018, or until all revenue from the last quarter's Fee payments has been distributed, whichever is later.

31. EXTENSION OF TERM

This Agreement may be extended for succeeding three-year term if COUNTY and participating jurisdictions so agree in writing.

32. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

33. EXECUTION BY COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

34. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

35. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

36. NOTICES

All notices and communications herein required shall be in writing to the other party as follows, unless expressly changed in writing:

CITY of Milpitas

City Representative Thomas C. Williams
Representative's Title City Manager
City Address 455 E. Calaveras Blvd.
Milpitas, CA 95035

Santa Clara County

Director
Consumer and Environmental Protection Agency
1553 Berger Drive
San Jose, CA 95112

Attachments:

A Projected Fiscal Years 2016, 2017, and 2018 AB939 HHW Fee Funding Allocation by Jurisdiction
B Estimated HHW Program Fixed Costs for Fiscal Years 2016, 2017, and 2018
C HHW Schedule of Collection Events for Fiscal Year 2016
D Household Hazardous Waste Emergency Collection Plan
E Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contracts

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IN WITNESS WHEREOF, the parties have executed this AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM on the dates as stated below:

"COUNTY"

Dave Cortese, President
Board of Supervisors

Date:_____

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

LYNN REGADANZ Date
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

3/6/15
Michael L. Rossi Date
Deputy County Counsel

"CITY"

CITY/TOWN OF Milpitas,
A municipal corporation

By: _____

Title: City Manager

Date: _____

Attachment A

Projected Fiscal Years 2016, 2017, 2018 AB939 HHW Fee Funding Allocation by Jurisdiction

Cities	No of Households	4% of Households	Disposal tonnage	AB939 HHW Fee $2.60 per ton	Fixed Cost $2.47 per HH	SJ Facility $18.06 use surcharge	Variable Cost $68 per car	Discretionary Fund	Estimated Augmentation	Anticipated Participation	Anticipated Particiation at SJ Facility
Campbell	17,604	704.16	32,902.51	$ 85,546.53	$ 43,481.88	$ 6,918.90	$ 47,882.88	(12,737.13)	$ 27,618.25	923	383
Cupertino	21,037	841.48	77,298.88	$ 200,977.09	$ 51,961.39	$ -	$ 680.00	148,335.70		10	0
Gilroy	15,533	621.32	37,660.67	$ 97,917.74	$ 38,366.51	$ 420.24	$ 42,249.76	16,881.23	$ 2,494.24	658	23
Los Altos	11,278	451.12	14,608.06	$ 37,980.96	$ 27,856.66	$ 2,181.82	$ 30,676.16	(22,733.68)	$ 66,857.52	1,100	121
Los Altos Hills	3,080	123.20	2,013.30	$ 5,234.58	$ 7,607.60	$ 684.52	$ 8,377.60	(11,435.14)	$ 22,165.54	281	38
Los Gatos	13,185	527.40	23,552.12	$ 61,235.51	$ 32,566.95	$ 8,781.31	$ 35,863.20	(15,975.94)	$ 56,476.74	1,123	486
Milpitas	20,242	809.68	63,180.22	$ 164,268.57	$ 49,997.74	$ 1,572.97	$ 55,058.24	57,639.62		810	87
Monte Sereno	1,293	51.72	1,414.16	$ 3,676.82	$ 3,193.71	$ 1,137.78	$ 3,516.96	(4,171.63)	$ 10,446.67	144	63
Morgan Hill	13,617	544.68	42,705.11	$ 111,033.29	$ 33,633.99	$ 869.06	$ 37,038.24	39,492.00	$ 31,505.76	1,008	48
Mountain View	34,173	1,366.92	53,308.92	$ 138,603.19	$ 84,407.31	$ 1,909.97	$ 92,950.56	(40,664.64)	$ 61,614.08	1,675	106
Palo Alto	28,546	0.00	41,109.73	$ 106,885.30		$ -		106,885.30		0	
San Jose	323,203	12,928.12	553,851.57	$ 1,440,014.08	$ 798,311.41	$ 127,789.59	$ 879,112.16	(365,199.08)	$ 365,199.08	12,928	7,076
Santa Clara	45,770	1,830.80	135,911.26	$ 353,369.28	$ 113,051.90	$ 4,345.05	$ 124,494.40	111,477.93	$ 130,029.60	3,743	241
Saratoga	11,172	446.88	17,441.99	$ 45,349.17	$ 27,594.84	$ 5,770.55	$ 30,387.84	(18,404.05)	$ 52,684.21	951	320
Sunnyvale	56,998	2,279.92	98,182.53	$ 255,274.58	$ 140,785.06	$ 1,081.28	$ 155,034.56	(41,626.32)	$ 231,895.76	5,078	60
Unincorporated	18,538	741.52	31,263.28	$ 81,284.53	$ 45,788.86	$ 7,881.48	$ 50,423.36	(22,809.17)	$ 92,609.81	1,768	436
Total	635,269	24,268.92	1,226,404.31	$ 3,188,651.21	$ 1,498,605.81	$ 171,344.50	$ 1,593,745.92	(75,045.02)	$ 1,151,597.28	32,200	9,488

Notes: No of HH based on 1/1/14 estimates; Anticipated participation based on FY11 actual participation except for Milpitas & SJ. (FY11 actual for these 2 cities are below the 4% of HH); Anticipated SJ facility paritication based on FY14 participation at SJ temp events.

ATTACHMENT B

Estimated HHW Program Fixed Costs for Fiscal Years 2016, 2017, and 2018

FIXED COST		
Staff Salary And Benefits	.5 HMPM,Sr. HMS, 3 HMTs, .8 Acct, Sr MA, .5 AMAA, .5AMAB, .8 OSIII,	$1,048,398
County Admin Overhead	20% of Salary above	$209,680
County Counsel		$10,000
Phones and Communications		$11,000
Facilities Lease Costs	San Jose, Temporary	$172,000
Vehicle Costs		$25,528
Computers ans software		$7,000
Office Supplies and postage		$7,500
Maintenance		$5,000
Staff Training		$2,500
ESTIMATED ANNUAL TOTAL		**$1,498,606**

ATTACHMENT C: HHW SCHEDULE OF COLLECTION EVENTS FOR FISCAL YEAR 2016

2015/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Saturday	4	No Event	No Event	FOURTH OF JULY
	Fri,Sat	10,11	San Jose	Permanent	
	Fri,Sat	17,18	San Jose	Permanent	
	Saturday	18	Sunnyvale	Temporary	
	Fri,Sat	24,25	San Jose	Permanent	
August	Fri,Sat	31,1	San Martin	Permanent	
	Fri,Sat	31,1	San Jose	Permanent	
	Fri,Sat	7,8	San Jose	Permanent	
	Fri,Sat	14,15	San Jose	Permanent	
	Fri,Sat	21,22	San Jose	Permanent	
	Fri,Sat	28,29	San Jose	Permanent	
September	Saturday	5	No Event	No Event	LABOR DAY WEEKEND
	Fri,Sat	11,12	San Jose	Permanent	
	Fri,Sat	18,19	San Jose	Permanent	
	Fri,Sat	25,26	San Jose	Permanent	
	Saturday	26	Santa Clara	Temporary	
October	Fri,Sat	2,3	San Martin	Permanent	
	Fri,Sat	2,3	San Jose	Permanent	
	Fri,Sat	9,10	San Jose	Permanent	
	Fri,Sat	16,17	San Jose	Permanent	
	Saturday	17	Sunnyvale	Temporary	
	Fri,Sat	23,24	San Jose	Permanent	
	Fri,Sat	30,31	San Jose	Permanent	
November	Fri,Sat	6,7	San Martin	Permanent	
	Fri,Sat	6,7	San Jose	Permanent	
	Fri,Sat	13,14	San Jose	Permanent	
	Fri,Sat	20,21	San Jose	Permanent	
	Saturday	28	No Event	No Event	THANKSGIVING
December	Fri,Sat	4,5	San Martin	Permanent	
	Fri,Sat	4,5	San Jose	Permanent	
	Fri,Sat	11,12	San Jose	Permanent	
	Fri,Sat	18,19	San Jose	Permanent	
	Saturday	26	No Event	No Event	CHRISTMAS
2016/Jan	Saturday	2	No Event	No Event	NEW YEAR
	Fri,Sat	8,9	San Jose	Permanent	
	Fri,Sat	15,16	San Jose	Permanent	
	Saturday	16	Sunnyvale	Temporary	
	Fri,Sat	22,23	San Jose	Permanent	
	Fri,Sat	29,30	San Jose	Permanent	

ATTACHMENT C: HHW SCHEDULE OF COLLECTION EVENTS FOR FISCAL YEAR 2016-continued

2016/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
February	Fri,Sat	5,6	San Martin	Permanent	
	Fri,Sat	5,6	San Jose	Permanent	
	Fri,Sat	12,13	San Jose	Permanent	
	Fri,Sat	19,20	San Jose	Permanent	
	Fri,Sat	26,27	San Jose	Permanent	
March	Fri,Sat	4,5	San Martin	Permanent	
	Fri,Sat	4,5	San Jose	Permanent	
	Fri,Sat	11,12	San Jose	Permanent	
	Fri,Sat	18,19	San Jose	Permanent	
	Fri,Sat	25,26	San Jose	Permanent	
April	Fri,Sat	1,2	San Martin	Permanent	
	Fri,Sat	1,2	San Jose	Permanent	
	Fri,Sat	8,9	San Jose	Permanent	
	Saturday	9	Los Altos	Temporary	
	Fri,Sat	15,16	San Jose	Permanent	
	Saturday	16	Sunnyvale	Temporary	
	Fri,Sat	22,23	San Jose	Permanent	
	Fri,Sat	29,30	San Jose	Permanent	
	Saturday	30	Santa Clara	Temporary	
May	Fri,Sat	6,7	San Martin	Permanent	
	Fri,Sat	6,7	San Jose	Permanent	
	Fri,Sat	13,14	San Jose	Permanent	
	Fri,Sat	20,21	San Jose	Permanent	
	Saturday	28	No Event	No Event	MEMORIAL DAY WEEKEND
June	Fri,Sat	3,4	San Martin	Permanent	
	Fri,Sat	3,4	San Jose	Permanent	
	Fri,Sat	10,11	San Jose	Permanent	
	Fri,Sat	17,18	San Jose	Permanent	
	Fri,Sat	24,25	San Jose	Permanent	
	Saturday	25	Milpitas	Temporary	

*SUBJECT TO CHANGE 12/30/2014

Attachment D

HOUSEHOLD HAZARDOUS WASTE EMERGENCY COLLECTION PLAN

1. PURPOSE

The purpose of the Household Hazardous Waste Emergency Collection Plan is to minimize potential public health and safety impacts, as well as to minimize costs and confusion during an emergency or disaster. This Attachment describes the services the County can provide and the responsibilities of each party for the collection of household hazardous wastes (HHW) in response to an emergency as defined by the local jurisdiction.

Jurisdictions should contact local emergency agencies, the Governor's Office of Emergency Services (OES), and the Department of Toxic Substances Control (DTSC) for more specific information on hazardous materials emergency response.

2. Timing of HHW

While it is important to have special collection opportunities for disaster-related HHW as soon as possible to avoid illegal disposal or harm to people and/or the environment, having an event or service too soon after a disaster may result in low participation. Sufficient public notification, assessment and monitoring of the disaster, and cleanup process by the City HHW Coordinators is essential.

3. Public Information/Notification:

Cities should be prepared to provide the public with information related to the problems associated with HHW along with information about special collection events and services. Upon the decision to hold an emergency collection event, it is the City's responsibility to prepare and deliver the necessary public outreach to notify the public of an upcoming event. A City's public outreach program should evaluate all forms of media including: newspaper ads, posters, flyers, press releases, banners, door-to-door notices, roadside signs, signs on dumpsters, radio public service announcements, and television public access stations. Be aware of communities where multiple language ads will be necessary.

4. State HHW Collection Permits

The State Department of Toxic Substances Control (DTSC) is responsible for issuing the necessary state permits for HHW collection facilities. During an emergency, the County will obtain the necessary emergency permit, for special collection of household hazardous waste, from DTSC through their expedited approval process.

5. Collection Events

Temporary collection events can be set-up at various sites including parking lots, city maintenance yards, neighborhoods needing service, and at landfills or a centralized location to service larger segments of the population. Waste collected can be transported with the HHW Program's hazardous waste transportation vehicle. In additional, events can be scheduled at the two existing Countywide Household Hazardous Waste Collection Facilities (CoHHWCF). The following options are available to each participating City.

- Neighborhood Drop-off Events: The County is able to provide localized service to specific areas in need of household hazardous waste collection services. The County will work with City Solid Waste Coordinators to conduct coordinated efforts to residents in the affected area. After a specific event, waste will be transported by County staff or a hazardous waste contractor to an appropriate facility.

- Mobile HHW Event: The County conducts Household Hazardous Waste Collection Event (Events) at various sites located in Santa Clara County throughout the year. Events will be expanded to give priority to disaster victims when requested by the City. The County shall obtain all necessary permits and licenses required for the events and shall provide and/or contract for the services of properly trained personnel and hazardous waste haulers. The County shall also provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at events.

- CoHHWCF: The County operates two permitted HHW collection facilities for the collection and storage of HHW. The County shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected at the CoHHWCF.

  The CoHHWCF are located at:
  - ***San Martin, 13055 Murphy Ave, San Martin***
  - ***San Jose, 1608 Las Plumas, San Jose***

6. Costs, Documentation, and Reimbursements

Cities will be billed on a cost recovery basis. Costs of emergency events will be tracked and billed separately. Emergency funding applications pending from the State or Federal government for reimbursements in no way relieves the City of responsibility to make timely payment to the County in accordance with the terms of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

The County agrees to provide the City with a detailed accounting of services provided for an emergency collection. Documentation will track the time and materials of staff, outside contractor expenses, and quantities and types of waste collected to demonstrate that the wastes were generated above and beyond existing collection programs.

Services to businesses will be provided on a cost recovery basis and according to Attachment D of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, which includes program administration, on-site collection, transportation, and disposal costs. The County will assume responsibility for collecting fees from participating businesses.

7. State and Federal Assistance and Funds

It is the city's responsibility to pursue reimbursement from State or Federal agencies.

State Office of Emergency Services (OES)

The OES is responsible for requesting assistance on behalf of local jurisdictions for resources beyond the capability of the jurisdiction. State assistance may include assistance available from State, Federal, or private sources. If a local jurisdiction is declared a state disaster area, and the local jurisdiction deems that the needs of the disaster response are beyond its capabilities, then the local jurisdiction can request assistance and reimbursement of costs from OES.

Follow Standardized Emergency Management System (SEMS)

All requests and emergency responses must be in accordance with the SEMS. The State Department of Toxic Substances Control may have funding available for hazardous waste response and collection.

Federal Assistance

If a state disaster area is declared a federal disaster, then federal funding assistance may be available through the State OES. Funding and assistance may be available from Federal agencies such as FEMA and the U.S. EPA.

Damage estimates: The city should provide to the State OES estimates of damages and a "scope of work requested." It is recommended that the local HHW coordinator meet ahead of time with local emergency agencies or State OES contacts regarding the proper procedures and wording of requests for assistance.

Funding Process: The funding process may vary depending on the unique circumstances of the disaster. The process can either be the traditional FEMA reimbursement process, or by direct assistance from EPA.

REFERENCES

California Integrated Waste Management Board, Integrated Waste Management Disaster Plan: Guidance for local government on disaster debris management, January 1997.

Emergency Planning Contacts and Personnel

Primary County Contact: County of Santa Clara
Consumer and Environmental Protection Agency
Recycling and Waste Reduction Division
Household Hazardous Waste Program
Rob D'Arcy
Recycling and Waste Reduction Division Manager
408-918-1967

Responsibility: Coordinate and establish proper collection and disposal methods for household hazardous waste. Assess the need for HHW and CESQG services in consultation with the City and other operations.

Information and Public Affairs
2800 Meadowview Road
Sacramento, CA 95832
916/262-1843
916/262-1841 (voice/TDD)

OES - Coastal Region
1300 Clay Street, Suite 400
Oakland, CA 94612
510/286-0895
510/286-0877 (voice/TDD)

CHEMTREC Emergency number, (800) 424-9300
Non-emergency (800) 262-8200

Chemtrec is a public service established by the Chemical Manufacturers Association. The Center was developed as a resource for obtaining immediate emergency response information to mitigate accidental chemical releases, and as a means for emergency responders to obtain technical assistance from chemical industry product safety specialists, emergency response coordinators, toxicologists, physicians, and other industry experts to safely mitigate incidents involving chemicals.

Attachment E

EXHIBIT B-2D (revised)

INSURANCE REQUIREMENTS FOR ENVIRONMENTAL SERVICES CONTRACTS

(Hazardous Waste Disposal, Remediation Services, Environmental Consulting, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

   a. Each occurrence - $1,000,000

   b. General aggregate - $2,000,000

   c. Products/Completed Operations aggregate - $2,000,000

   d. Personal Injury - $1,000,000

2. General liability coverage shall include:

   a. Premises and Operations

   b. Products/Completed

   c. Personal Injury liability

   d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

   Additional Insured Endorsement, which shall read:

   > "County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds."

   Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. Coverage shall include Environmental Impairment Liability Endorsement MCS90 for contracts requiring the transportation of hazardous materials/wastes.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

6. Contractors Pollution Liability Insurance or Pollution Errors and Omissions Liability Insurance

Coverage shall provide a minimum of not less than five million dollars ($5,000,000) per occurrence and aggregate for bodily injury, personal injury, property damage and cleanup costs both on and offsite.

7. Professional Errors and Omissions Liability Insurance (required for contractors providing professional services, such as through a professional engineer, registered geologist, etc.)

a. Coverage shall be in an amount of not less than one million dollars ($1,000,000) per occurrence/aggregate.

b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars ($50,000) per occurrence/event.

c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

8. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).

b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.

4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or

countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

Project No: RMC
Project Name: Utility Engineering Support

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AMENDMENT No. 1 TO AGREEMENT
FOR CONSULTATION AND OTHER SERVICES

This Amendment is entered into this 7th day of April, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and RMC Water & Environment, Inc., a California corporation (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an Agreement on October 7, 2014 entitled "Consultant Services Agreement between the City of Milpitas and RMC Water & Environment, Inc." ("Agreement") for engineering services in the amount of $27,734.00 with and expiration date of June 30, 2015; and

WHEREAS, the parties desire to extend the term of the Agreement and increase compensation for additional consultation services.

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

1. Section 1.1, entitled "Term of Services" of the Agreement is amended in its entirety to read as follows:

1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2015, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

2. Section 2, entitled " Compensation " of the Agreement is amended in its entirety to read as follows:

Section 2. **COMPENSATION.** City hereby agrees to pay Consultant an amount not to exceed Eighty Five Thousand Seven Hundred Thirty Four Dollars ($85,734.00) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

3. The Consultant agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated October 7, 2014, between RMC Water & Environment, Inc., and the City of Milpitas. The Consultant shall provide the City with renewal certificates of the current policies upon the expiration of the current policy.

4. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date on this page.

APPROVED BY:

CITY OF MILPITAS

_____
Thomas C. Williams, City Manager

CONSULTANT

_____
Consultant Name and Title

_____
Steven J. Machida, Director of Engineering

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

*21A

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
Harris & Associates, Inc.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), Harris & Associates, Inc., a California corporation ("Consultant") as of April 7, 2015.

AGREEMENT

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

1.1 Term of Services. The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2015, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.

1.3 Professional Skill. It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.

1.4 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit B shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to complete Consultant's obligations hereunder.

Section 2. **COMPENSATION.** City hereby agrees to pay Consultant amount not to exceed Eighty Thousand ($80,000) dollars based on time and materials for all services to be performed and reimbursable costs incurred under the entire term of this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

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

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

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

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

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

2.6 **Reimbursable Expenses.** Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

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

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

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

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

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

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

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

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

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

Coverage shall not be canceled by Consultant except after thirty (30) days' prior written notice by mail has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001, or equivalent, or Insurance Services Office form number GL 0002, or equivalent, covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, or equivalent, Code 1 (“any auto”). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

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

limitations on the scope of protection afforded to City or its officers and employees.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials and employees, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers and employees.

e. Coverage shall not be canceled by Consultant except after thirty (30) days' prior written notice by mail has been given to the City by the consultant.

4.3 **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 Coverage shall not be canceled by Consultant except after thirty (30) days' prior written notice by mail has been given to the City by the consultant.

4.3.3 N/A.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that

precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers and employees. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at

Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

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

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

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

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers and employees from and against losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Consultant or its employees, subcontractors, or agents. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the negligence or willful misconduct of the City or its officers and employees and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an

employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of

this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based

upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records

or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

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

Section 10 MISCELLANEOUS PROVISIONS.

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

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

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

10.4 **No Implied Waiver of Breach**. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by Ahmed Aly, Principal Engineer, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Scott Alman, P.E., Director

Engineer Services
Harris & Associates, Inc.
1401 Willow Pass Road, Suite 500
Concord, CA 94520

Any written notice to City shall be sent to:

Steven J. Machida, Acting Public Works Director/City Engineer
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Thomas C Williams, City Manager

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Steven J. Machida, Director of Engineering

CONSULTANT

Scott D. Alman, P.E.

Taxpayer Identification Number

94-2385238

Corporate Entity Number

C0808286

EXHIBIT A

SCOPE OF SERVICES

Consultant shall perform the following engineering support services, up to the available budget, as authorized by the City in writing:

1. Provide a licensed civil engineer/land surveyor to review and sign parcel/final maps for technical correctness.
2. Review and provide comments on improvement plans.
3. Review easement deeds and/or legal plats.
4. Assist in preparation of resolutions, agreements, conditions of approval and other related documents.
5. Respond to inquiries and attend review internal meetings and development meetings.
6. Attend other City meetings, such as, Planning Commission and City Council.
7. Other engineering support services as requested by City.

It is agreed upon between the parties that Consultant has performed certain services for the City under this Agreement prior to the Effective Date of this Agreement. City agrees to compensate Consultant for all approved services completed in accordance with the terms and conditions of this Agreement from March 16, 2015 to the Effective Date of this Agreement.

EXHIBIT B

COMPENSATION SCHEDULE

1. Charges for the work describe in Exhibit "A" shall be based on time required to accomplish the work and shall be in accordance with the schedule of fees and charges as shown in below:

Personnel	Hourly Rates
Scott D. Alman, P.E. – Director, Engineering Services (PM)	$215
Robert Williamson – Plan Checker	$155
Recorded Document Signature (Bob Guletz or Raymond Towne)	$350 per document

Other Harris & Associate, Inc. personnel may be assigned, upon mutual agreement of City and Harris & Associates, Inc., and according to the Harris billing rate schedule 2015.

EXHIBIT C

INSURANCE DOCUMENTS

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
CSG Consultants, Inc.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), CSG Consultants, Inc., a California corporation ("Consultant") as of April 7, 2015.

AGREEMENT

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

1.1 Term of Services. The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2015, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.

1.3 Professional Skill. It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.

1.4 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit B shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to complete Consultant's obligations hereunder.

Section 2. **COMPENSATION.** City hereby agrees to pay Consultant amount not to exceed Seventy Thousand ($70,000) dollars based on time and materials for all services to be performed and reimbursable costs incurred under the entire term of this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

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

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

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

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

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

2.6 **Reimbursable Expenses.** Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

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

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

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

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

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

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

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

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

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

Coverage shall not be canceled by Consultant except after thirty (30) days' prior written notice by mail has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001, or equivalent, or Insurance Services Office form number GL 0002, or equivalent, covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, or equivalent, Code 1 (“any auto”). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

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

limitations on the scope of protection afforded to City or its officers and employees.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials and employees, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers and employees.

e. Coverage shall not be canceled by Consultant except after thirty (30) days' prior written notice by mail has been given to the City by the consultant.

4.3 **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 Coverage shall not be canceled by Consultant except after thirty (30) days' prior written notice by mail has been given to the City by the consultant.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that

precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers and employees. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at

Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

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

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

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

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers and employees from and against losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Consultant or its employees, subcontractors, or agents. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the negligence or willful misconduct of the City or its officers and employees and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an

employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of

this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based

upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records

or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

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

Section 10 MISCELLANEOUS PROVISIONS.

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

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

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

10.4 **No Implied Waiver of Breach**. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by Ahmed Aly, Principal Engineer, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Mark Lander
CSG Consultants, Inc.
1700 South Amphlett Boulevard, 3rd floor
San Mateo, CA 94402

Any written notice to City shall be sent to:

Steven J. Machida, Director of Engineering
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

Thomas C Williams, City Manager

Cyrus Kianpour, CSG Consultants, Inc.

Taxpayer Identification Number

91-2053749

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Steven J. Machida, Director of Engineering

EXHIBIT A

SCOPE OF SERVICES

Consultant shall perform the following engineering support services, up to the available budget, as authorized by the City in writing:

1. Provide a licensed civil engineer/land surveyor to review and sign parcel/final maps for technical correctness.
2. Review and provide comments on improvement plans.
3. Review easement deeds and/or legal plats.
4. Assist in preparation of resolutions, agreements, conditions of approval and other related documents.
5. Respond to inquiries and attend review internal meetings and development meetings.
6. Attend other City meetings, such as, Planning Commission and City Council.
7. Other engineering support services as requested by City.

It is agreed upon between the parties that Consultant has performed certain services for the City under this Agreement prior to the Effective Date of this Agreement. City agrees to compensate Consultant for all approved services completed in accordance with the terms and conditions of this Agreement from March 16, 2015 to the Effective Date of this Agreement.

EXHIBIT B

COMPENSATION SCHEDULE

1. Charges for the work describe in Exhibit "A" shall be based on time required to accomplish the work and shall be in accordance with the schedule of fees and charges as shown in below:

Personnel	Hourly Rates
Eric Gonzales, Senior Engineering	$165.00

Other CSG Consultants, Inc. personnel may be assigned, upon mutual agreement of City and CSG Consultants, Inc., and according to the CSG billing rate schedule 2015.

EXHIBIT C

INSURANCE DOCUMENTS

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
Environmental Foresight, Inc.

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and **Environmental Foresight, Inc., a California corporation** ("Consultant") as of April 8, 2015.

AGREEMENT

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

1.1 Term of Services. The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2019, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.

1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a guaranteed maximum price not to exceed Two Hundred Forty Eight Thousand Four Hundred Dollars ($248,400) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this

Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon an agreed upon lump sum payment of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Lump sum design fees for performing each task shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

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

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

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

2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever

incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

2.4 **Lump Sum Design Fees.** Fees for work performed by Consultant shall not exceed the amounts shown on Exhibit B.

2.5 **Reimbursable Expenses.** Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement and shall not exceed Ten Thousand Dollars ($10,000.00).

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

2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

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

Section 3. **FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities, vehicles, computers, and equipment that may be necessary to perform the services required by this Agreement. When Consultant is on-site at Milpitas City Hall, Consultant may have access to certain City computers and equipment to perform services under this Agreement.

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

Section 4. **INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by

the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73)

covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

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

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

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

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

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

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

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or

willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and

agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

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

above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

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

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

Section 10 MISCELLANEOUS PROVISIONS.

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

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

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

10.4 **No Implied Waiver of Breach**. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by **Steven McHarris (408) 586-3273**, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Environmental Foresight, Inc.

Scott E Feuer, President
1855 Olympic Blvd, Ste 105
Walnut Creek, CA 94596

Any written notice to City shall be sent to:
Steven McHarris, Planning & Neighborhood Services Director
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Thomas C. Williams, City Manager

APPROVED AS TO CONTENT:

Steven McHarris,
Planning & Neighborhood Services Director

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

CONSULTANT

Scott E Feuer,
President

Taxpayer Identification Number

City of Milpitas Business License Number

EXHIBIT A

SCOPE OF SERVICES

The Scope of Services shall be as follows:

Phase One: Program Development

Task 1.1 Kick-off Meeting/Site Visit **Tentative Completion date: April 10, 2015**

Meet with the Client and consultant team to more thoroughly discuss the design issues, program, and ultimate vision for the City park and joint-use school project. Specifically, we will review and identify project goals, establish methods of communications, and review the project schedule. In addition, we will visit the project site and investigate the existing conditions and local context.

Deliverable: Prepare agenda and attend Kick off meeting in person as requested by City
Conduct site visit as requested by City

Task 1.2 Agency 'Needs Assessment' Meetings **Tentative Completion date: April 13, 2015**

Meet with the following agencies to gather information and obtain input on the proposed City park and joint-use school program (assume three (3) meetings):

1. Milpitas Unified School District (MUSD) & School Design Team
2. Parks Recreation & Cultural Resources Commission (PRCRC)
3. City Staff Meeting to review findings

Deliverable: Prepare agenda and all required documents for meetings
Attend meetings as requested by City

Task 1.3 Program Studies **Tentative Completion date: April 17, 2015**

Explore the site's opportunities and constraints and prepare precedent images to aid in understanding possible program amenities for the project site. Conceptual diagrammatic programming sketches, studies, and imagery will be prepared for City staff review in anticipation of the first Community Workshop.

Deliverable: Prepare conceptual diagram of park for City review and comments and submit to City staff prior to Community Workshop

Task 1.4 Community Workshop #1 **Tentative Completion date: April 20, 2015**

Conduct a Community Workshop with City staff to present the site's opportunities and constraints and possible program amenities which are practical for the project. The community's input will be acknowledged to help determine the desired park amenities.

Deliverable: Prepare agenda and any presentation materials for meetings
Conduct Community Workshop as requested by City

Task 1.5 City Staff Meeting/Next Steps **Tentative Completion date: April 27, 2015**
Meet with City staff to review input from the first Community Workshop, synthesize the gathered information, and discuss next steps for preparation of the Concept Alternatives.

Deliverable: Prepare summary of community input from Community Workshop #1 for meeting with City staff

Phase Two: Concept Alternatives

Task 2.1 Concept Plan Development **Tentative Completion date: May 15, 2015**
Generate two (2) joint-use park concept plans based on information gathered in Phase One. The concept plans will be color rendered and supported with imagery/sketches to help communicate the design concepts for presentation purposes.

Deliverable: Prepare two (2) conceptual park plans in preparation for Agency Presentation meetings

Task 2.2 Agency Presentation Meetings **Tentative Completion date: June 1, 2015**
Present the Concept Alternatives and incorporate feedback with a round of Concept Plan refinements after each meeting from each agency listed below (assume five (5) meetings):
1. City Staff
2. MUSD & School Design Team
3. PRCRC
4. Water District
5. City Staff Final Review

Deliverable: Prepare agenda and all required documents for meetings
Attend meetings in person as requested by City
Prepare and submit (2) copies to City staff of Concept Plan with refinements

Task 2.3 Community Workshop #2 **Tentative Completion date: June 8, 2015**
Conduct a second Community Workshop with City staff to present the two Concept Alternatives.
The community's input will be acknowledged to help determine the direction of a Preferred Concept Plan.

Deliverable: Prepare agenda and all required documents, including Concept Plan with refinements for meetings
Conduct Community Workshop #2 as requested by City

Task 2.4 City Staff Meeting/Next Steps **Tentative Completion date: June 15, 2015**
Meet with City staff to review input from the second Community Workshop, synthesize the gathered information, and discuss next steps for preparation of the Preferred Concept Plan.

Deliverable: Prepare summary of public input and next steps from Community Workshop #2
Attend meeting in person as requested by City

Phase Three: Preferred Concept Plan

Task 3.1 Preferred Concept Plan **Tentative Completion date: June 22, 2015**

Prepare a Preferred Concept Plan by incorporating gathered feedback from the Concept Alternatives for public hearings and approvals. The Preferred Concept Plan will be color rendered and supported with imagery/sketches to help communicate the design for presentation and approval purposes.

Deliverable: Prepare Preferred City Conceptual Park plan for City review and comments four weeks prior to Public Hearing

Task 3.2 Planning Commission Public Hearing **Tentative Completion date: July 22, 2015**

Present the Preferred Concept Plan to the Planning Commission for approval (assume one (1) public hearing).

Deliverable: Prepare powerpoint presentation
Present the Preferred Conceptual Plan to Planning Commission

Task 3.3 City Council Public Hearing **Tentative Completion date: August 18, 2015**

Present the Preferred Concept Plan to the City Council for approval (assume one (1) public hearing).

Deliverable: Present the Preferred Conceptual Plan to City Council

Phase Four: Design Development (estimated)

Take the Preferred Concept Plan and begin to develop the design into working drawing format. Initiate coordination with the consultant design team for City approval.

Deliverable: Submit project timeline and milestones for the preparation of the Preferred Concept Plan for Tasks 4.1-4.6.

Task 4.1 Grading & Drainage Coordination

Coordinate with the civil engineer on their grading and drainage concepts, vehicular right-of way improvements, and potential stormwater mitigation design.

Deliverable: Prepare agenda and all required documents for meetings
Attend meetings as requested by City

Task 4.2 Layout Plans

Prepare Layout plans describing and locating pedestrian hardscape areas and site furnishing amenities including ball fields, trail connections, outdoor gathering areas, street frontage, and general paving materials. Pedestrian light fixtures will be selected for application and style.

Deliverable: Provide Layout Plans for City review and comments

Task 4.3 Irrigation Master Plan/Concept

An irrigation concept will be developed that will guide the irrigation design and coordination effort with the adjoining school site. The Irrigation Master Plan will be designed to accommodate a fully automatic, water conserving irrigation system designed per the City's stringent water efficient landscaping requirements. Note that the actual irrigation system design (mainline/valves/laterals/head layout) will be provided within the Construction Document phase for building permit.

Deliverable: Provide Irrigation Master Plan for City review and comments

Task 4.4 Planting Plans

Prepare planting plans. Proposed plant materials will be located and identified with both botanical and common names, plant container sizes at installation, and quantities. Native and Mediterranean drought tolerant plant species will be used as appropriate to work with the proposed high-efficient irrigation system and the stormwater treatment areas.

Deliverable: Provide Planting Plans for City review and comments

Task 4.5 Details/Specifications/Notes

Consultant shall include design development details for hardscape various site amenities, site furnishings, and planting. Landscape Specification sections will be provided and coordinated in outlined format for inclusion in the draft Technical Specifications manual.

Deliverable: Provide Technical Specifications & Details for City review and comments

Task 4.6 Team Meetings and School Coordination

During the Design Development Phase, Consultant will need to meet occasionally with the City team, school design team, and the City agencies to refine the design, review and discuss plan-check comments, and resolve general project issues. Assumption of up to four (4) local Bay Area meetings during this Phase with the majority of project issues resolved via email correspondences and telephone.

Deliverable: Prepare agenda and all required documents for meetings
Attend meetings as requested by City

Phase Five: Construction Documents (estimated)

Prepare landscape Construction Documents for building permitting, bidding, and construction. During this Phase, Consultant will have included a 100% City submittal and one (1) round of reasonable landscape related City plan check comments.

Deliverable: Provide 100% Construction Documents for City review and comments
Provide one (1) revised Construction Documents per City comments

Task 5.1 Grading & Drainage Coordination

Consultant shall finalize coordination efforts with the civil engineer on developing landscape treatment measures for stormwater mitigation design and provide general input on their grading and drainage concepts. Note that all grading and drainage shall be designed by the engineer and indicated on their plans.

Task 5.2 Layout Plans

Consultant shall refine the Layout plans describing and dimensioning hardscape and site feature amenities including ball fields, trail connections, outdoor gathering areas, street frontage, and paving/hardscape materials. A pedestrian lighting concept will be developed indicating general light fixture locations and design intent. Final light fixture locations, type/models, photometric analysis, and circuiting shall be by the Electrical engineer. A hardscape material schedule will be included identifying colors, finishes, etc. Site amenities will be called-out and referenced to details and specifications/notes.

Deliverable: Provide Final Layout Plans

Task 5.3 Irrigation Plans

Consultant shall include a fully-automatic water-conserving irrigation system for all proposed landscape areas. Legend of equipment, standard specifications, watering schedules, and water use calculations will be included to comply with City's stringent water conservation requirements.

Deliverable: Provide Final Irrigation Plans

Task 5.4 Planting Plans

Refinement of planting plans for construction. All proposed plant materials will be located and identified with both botanical and common names, plant container sizes at installation, water use ratings, and quantities. Native and Mediterranean drought tolerant plant species will be used as appropriate to work with the proposed high-efficient irrigation system and the stormwater treatment areas.

Deliverable: Provide Final Planting Plans

Task 5.5 Details/Specifications/Notes

Consultant shall include construction details for site furnishings, various site amenities, pedestrian hardscape, irrigation, and planting with all written landscape Specification sections prepared for inclusion in the Technical Specifications manual. Assume front-end specifications will be prepared by the City.

Deliverable: Provide Final Technical Specifications & Details

Task 5.6 Team Meetings and School Coordination

During the Construction Document Phase, there will be a need to meet occasionally with the City, school design team, and other public agencies to refine the design, review and discuss plan-check comments, and resolve general project issues. Assumption of up to six (6) local Bay Area meetings for this Phase with the majority of project issues resolved via email correspondences and telephone.

Deliverable: Prepare agenda and all required documents for meetings
Attend meetings as requested by City

Phase Six: Construction Administration (estimated)

Provide assistance to landscape related bidding clarifications, RFI's, landscape submittals, and site observations for the approved landscape Construction Documents.

Deliverable: Provide construction administration as requested by City

Task 6.1 Bidding Assistance

Provide assistance to the City during the bidding process with contractors. Consultant can review and respond to landscape bid clarifications. All communications with bidders will be formally documented in accordance with City requirements and State law.

Deliverable: Provide bidding assistance as requested by City

Task 6.2 Landscape Submittals

Consultant shall respond as appropriate to all landscape related submittals requested in the specifications and notes. Responses can be formally reviewed, and if acceptable, approved for installation.

Deliverable: Provide landscape review and assistance as requested by City

Task 6.3 Request for Information (RFI)

Consultant shall review and respond to landscape related RFIs (Request for Information), ASI & Bulletins, etc. during construction. All communications will be formally sent through the City.

Deliverable: Provide assistance as requested by City

Task 6.4 Punch Lists and Substantial Completion

After project construction Consultant shall assist the City and review the site installation for conformance to the approved plans. As part of the budget, up to ten (10) site visits to prepare punch lists, etc.; one (1) preconstruction meeting and nine (9) site visits to monitor construction. Consultant will be available to work with construction phasing and timelines on an hourly basis if additional assistance is requested by the City.

Deliverable: Provide assistance as requested by City

Task 7.0 Additional Services

Additional services may be requested by City in writing for unanticipated work relating to the McCandless park site design and development.

EXHIBIT B

COMPENSATION SCHEDULE

Consultant shall be paid on a lump sum basis for completion of each task below to the satisfaction of City:

Phase One: Program Development	$12,800.
Phase Two: Concept Alternatives	$28,600.
Phase Three: Preferred Concept Plan	$12,000.
SUB-TOTAL PHASE 1-3 DESIGN FEE:	$53,400.
Phase Four: Design Development	est. $55,000.
Phase Five: Construction Documents	est. $45,000.
Phase Six: Construction Administration	est. $15,000.
SUB-TOTAL PHASE 4-6 DESIGN FEE:	$115,000.

Project Team Consultants and Additional Services (surveyor, civil, electrical, structural) est. $80,000.

TOTAL $248,400

Progress "Percent Complete" billing will be invoiced monthly and is due upon receipt.

CLARIFICATIONS TO THE CONTRACT

1. All reimbursable expenses, such as plotting, color/grayscale reproductions, mylars, postage and delivery, soils reports, etc. shall be at cost +15% for handling in addition to the design fees stated above.
2. All grading and drainage, water proofing, signage, public art design, structural engineering, water feature/pool mechanical design, vehicular paving, trash enclosure design, arborist evaluations, tree surveys, light circuiting, and demolition plans shall be by others.
4. Consultant assumes that all background base information (architecture, civil improvements, utilities, surveys) will be provided by others as digital AutoCAD files for our use.
5. Additional meetings, public hearings, site visits, illustrative exhibits, plan revisions, cost estimates/bid forms, value engineering, As-Built drawings, irrigation audits, and/or maintenance manuals, not included above, may be requested by the City as additional services.
6. All plan and document processing fees, applications, permitting procedures, and approvals with public agencies shall be by others.

EXHIBIT C
INSURANCE DOCUMENTS

*22B

ENVIRONMENTAL FORESIGHT, INC.
Landscape Architecture

March 5, 2015

Mr. Tom Williams, City Manager
City of Milpitas
455 E. Calaveras Blvd., 3rd Floor
Milpitas, CA 95035
T (408) 586-3050
F (408) 586-3056
E twilliams@ci.milpitas.ca.gov

Regarding: McCandless City Park & Joint-Use School - Contract Fee Proposal
Milpitas, California

Dear Mr. Williams:

Environmental Foresight, Inc. (hereinafter "EFI") is pleased to present this Contract Fee Proposal to the City of Milpitas (hereinafter "Client") for Landscape Architectural services for the McCandless City Park & Joint-Use School project at McCandless Drive and Montague Expressway, in Milpitas California. This proposal is based on a scoping meeting at the City Manager's office on 2/26/15.

Our understanding is that the City reached an agreement with the Milpitas Unified School District (MUSD) to sell 6.7 acres of the City owned 10.88 acre McCandless site for a new K-6 school. A portion of the City owned parcel will be used as joint-use for park and school recreation facilities. The scope of the project herein is to commence design of the City park and joint-use parcels to develop a state-of-the and recreational facility for the community. A design effort for street frontage, trail connections, park amenities, for the joint-use school area are required to move the project from initial program studies through final construction.

For your consideration, we have included a detailed outline of our phases, tasks, and design fees for your understanding. If you should have any questions or concerns regarding this proposal please contact us.

Our Scope of Services shall be as follows:

Phase One: Program Development

Task 1.1 Kick-off Meeting/Site Visit

Meet with the Client and consultant team to more thoroughly discuss the design issues, program, and ultimate vision for the City park and joint-use school project. Specifically, we will review and identify project goals, establish methods of communications, and review the project schedule. In addition, we will visit the project site and investigate the existing conditions and local context.

Task 1.2 Agency 'Needs Assessment' Meetings

Meet with the following agencies to gather information and obtain input on the proposed City park and joint-use school program (assume three (3) meetings):

1. Milpitas Unified School District (MUSD) & School Design Team
2. Parks Recreation & Cultural Resources Commission (PRCRC)

3. City Staff Meeting to review findings

Task 1.3 Program Studies

Explore the site's opportunities and constraints and prepare precedent images to aid in understanding possible program amenities for the project site. Conceptual diagrammatic programming sketches, studies, and imagery will be prepared for City staff review in anticipation of the first Community Workshop.

Task 1.4 Community Workshop #1

Conduct a Community Workshop with City staff to present the site's opportunities and constraints and possible program amenities which are practical for the project. The community's input will be acknowledged to help determine the desired park amenities.

Task 1.5 City Staff Meeting/Next Steps

Meet with City staff to review input from the first Community Workshop, synthesize the gathered information, and discuss next steps for preparation of the Concept Alternatives.

Phase Two: Concept Alternatives

Task 2.1 Concept Plan Development

Generate two (2) joint-use park concept plans based on information gathered in Phase One. The concept plans will be color rendered and supported with imagery/sketches to help communicate the design concepts for presentation purposes.

Task 2.2 Agency Presentation Meetings

Present the Concept Alternatives and incorporate feedback with a round of Concept Plan refinements after each meeting from each agency listed below (assume five (5) meetings):

1. City Staff
2. MUSD & School Design Team
3. PRCRC
4. Water District
5. City Staff Final Review

Task 2.3 Community Workshop #2

Conduct a second Community Workshop with City staff to present the two Concept Alternatives. The community's input will be acknowledged to help determine the direction of a Preferred Concept Plan.

Task 2.4 City Staff Meeting/Next Steps

Meet with City staff to review input from the second Community Workshop, synthesize the gathered information, and discuss next steps for preparation of the Preferred Concept Plan.

Phase Three: Preferred Concept Plan

Task 3.1 Preferred Concept Plan

Prepare a Preferred Concept Plan by incorporating gathered feedback from the Concept Alternatives for public hearings and approvals. The Preferred Concept Plan will be color rendered and supported with imagery/sketches to help communicate the design for presentation and approval purposes.

Task 3.2 Planning Commission Public Hearing

Present the Preferred Concept Plan to the Planning Commission for approval (assume one (1) public hearing).

Task 3.3 City Council Public Hearing

Present the Preferred Concept Plan to the City Council for approval (assume one (1) public hearing).

Phase Four: Design Development (estimated)

Take the Preferred Concept Plan and begin to develop the design into working drawing format. Initiate coordination with the consultant design team for agency approvals.

Task 4.1 Grading & Drainage Coordination

We will coordinate with the civil engineer on their grading and drainage concepts, vehicular right-of-way improvements, and potential stormwater mitigation design.

Task 4.2 Layout Plans

EFI will prepare Layout plans describing and locating pedestrian hardscape areas and site furnishing amenities including ball fields, trail connections, outdoor gathering areas, street frontage, and general paving materials. Pedestrian light fixtures will be selected for application and style.

Task 4.3 Irrigation Master Plan/Concept

An irrigation concept will be developed that will guide the irrigation design and coordination effort with the adjoining school site. The Irrigation Master Plan will be designed to accommodate a fully-automatic, water conserving irrigation system designed per the City's stringent water efficient landscaping requirements. Note that the actual irrigation system design (mainline/valves/laterals/head layout) will be provided within the Construction Document phase for building permit.

Task 4.4 Planting Plans

Prepare planting plans. Proposed plant materials will be located and identified with both botanical and common names, plant container sizes at installation, and quantities. Native and Mediterranean drought tolerant plant species will be used as appropriate to work with the proposed high-efficient irrigation system and the stormwater treatment areas.

Task 4.5 Details/Specifications/Notes

We will include design development details for hardscape various site amenities, site furnishings, and planting. Landscape Specification sections will be provided and coordinated in outlined format for inclusion in the draft Technical Specifications manual.

Task 4.6 Team Meetings and School Coordination

During the Design Development Phase we assume there will be a need to meet occasionally with the Client, school design team, and the City agencies to refine the design, review and discuss plan-check comments, and resolve general project issues. We will assume up to four (4) local Bay Area meetings during this Phase with the majority of project issues resolved via email correspondences and telephone.

Phase Five: Construction Documents (estimated)

Prepare landscape Construction Documents for building permitting, bidding, and construction. During this Phase, we have included a 100% City submittal and one (1) round of reasonable landscape related City plan check comments.

Task 5.1 Grading & Drainage Coordination

We will finalize coordination efforts with the civil engineer on developing landscape treatment measures for stormwater mitigation design and provide general input on their grading and drainage concepts. Note that all grading and drainage shall be designed by the engineer and indicated on their plans.

Task 5.2 Layout Plans

EFI will refine the Layout plans describing and dimensioning hardscape and site feature amenities including ball fields, trail connections, outdoor gathering areas, street frontage, and paving/hardscape materials. A pedestrian lighting concept will be developed indicating general light fixture locations and design intent. Final light fixture locations, type/models, photometric analysis, and circuiting shall be by the Electrical engineer. A hardscape material schedule will be included identifying colors, finishes, etc. Site amenities will be called-out and referenced to details and specifications/notes.

Task 5.3 Irrigation Plans

We will include a fully-automatic water-conserving irrigation system for all proposed landscape areas. Legend of equipment, standard specifications, watering schedules, and water use calculations will be included to comply with City's stringent water conservation requirements.

Task 5.4 Planting Plans

Refinement of planting plans for construction. All proposed plant materials will be located and identified with both botanical and common names, plant container sizes at installation, water use ratings, and quantities. Native and Mediterranean drought tolerant plant species will be used as appropriate to work with the proposed high-efficient irrigation system and the stormwater treatment areas.

Task 5.5 Details/Specifications/Notes

We will include construction details for site furnishings, various site amenities, pedestrian hardscape, irrigation, and planting with all written landscape Specification sections prepared for inclusion in the Technical Specifications manual. Assume front-end specifications will be prepared by the Client.

Task 5.6 Team Meetings and School Coordination

During the Construction Document Phase we assume there will be a need to meet occasionally with the Client, school design team, and City agencies to refine the design, review and discuss plan-check comments, and resolve general project issues. We will assume up to six (6) local Bay Area meetings for this Phase with the majority of project issues resolved via email correspondences and telephone.

Phase Six: Construction Administration (estimated)

Provide assistance to landscape related bidding clarifications, RFI's, landscape submittals, and site observations for the approved landscape Construction Documents.

Task 6.1 Bidding Assistance

Provide assistance to the Client during the bidding process with contractors. EFI can review and respond to landscape bid clarifications. All communications with bidders will be formally documented.

Task 6.2 Landscape Submittals

We can respond as appropriate to all landscape related submittals requested in the specifications and notes. Responses can be formally reviewed, and if acceptable, approved for installation.

Task 6.3 Request for Information (RFI)

EFI can review and respond to landscape related RFIs (Request for Information), ASI & Bulletins, etc. during construction. All communications will be formally sent through the Client.

Task 6.4 Punch Lists and Substantial Completion

After project construction EFI can assist the Client and review the site installation for conformance to the approved plans. We budgeted for ten (10) site visits to prepare punch lists, etc.; one (1) pre-

construction meeting and nine (9) site visits to monitor construction. We can be available to work with construction phasing and timelines on an hourly basis if additional assistance is requested by the Client.

Our Lump Sum Design Fees for the above described Phase One Tasks shall be:

Phase One: Program Development	**$12,800.**
Phase Two: Concept Alternatives	**$28,600.**
Phase Three: Preferred Concept Plan	**$12,000.**
SUB-TOTAL PHASE 1-3 DESIGN FEE:	**$53,400.**
Phase Three: Design Development	**est. $55,000.**
Phase Four: Construction Documents	**est. $45,000.**
Phase Five: Construction Administration	**est. $15,000.**
SUB-TOTAL PHASE 3-5 ESTIMATED DESIGN FEE:	**$115,000.**
Project Team Consultants (surveyor, civil, electrical, structural)	**est. $80,000.**

Progress "Percent Complete" billing will be invoiced monthly and is due upon receipt.

CLARIFICATIONS TO THE CONTRACT

1. All reimbursable expenses, such as plotting, color/grayscale reproductions, mylars, postage and delivery, soils reports, etc. shall be at cost +15% for handling in addition to the design fees stated above.
2. This is a competitive fee proposal and does not allow for major or multiple revisions required by the client, consultants, contractor, and/or public agencies. These will be considered extra services.
3. All grading and drainage, water proofing, signage, public art design, structural engineering, water feature/pool mechanical design, vehicular paving, trash enclosure design, arborist evaluations, tree surveys, light circuiting, and demolition plans shall be by others.
4. EFI assumes that all background base information (architecture, civil improvements, utilities, surveys) will be provided by others as digital AutoCAD files for our use.
5. Additional meetings, public hearings, site visits, illustrative exhibits, plan revisions, cost estimates/bid forms, value engineering, As-Built drawings, irrigation audits, and/or maintenance manuals, not included above, may be requested by the Client as additional services.
6. All plan and document processing fees, applications, permitting procedures, and approvals with public agencies shall be by others.
7. This Fee Proposal is valid for 60 days. EFI's billing rates are subject to change yearly.

We look forward to working with you and City staff to acquire approvals through construction for this joint-use park project. We feel we can contribute substantially to the park design, team orchestration, approval process, and implementation.

If you approve of the above, please sign below and email or fax a copy for our files so we can begin work and meet your schedule.

Sincerely,
ENVIRONMENTAL FORESIGHT, INC.

Scott E. Feuer, President
Landscape Architect
California Lic. #4648

ACCEPTED BY:
CITY OF MILPITAS

_____
Mr. Tom Williams, City Manager

_____
Date

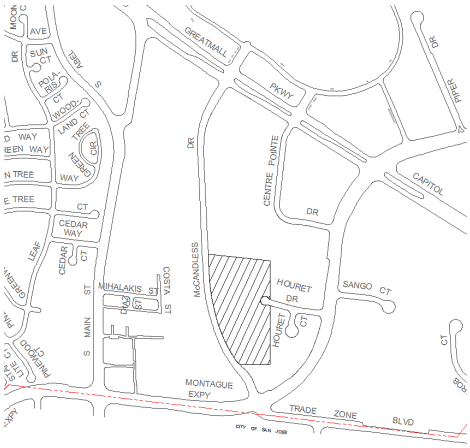
City of Milpitas
2014-19 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Park Improvement	**5102**	**McCandless Park**	1

CONTACT: Steven McHarris [3273] / Steven Machida [3355]

PRIORITY: Enhance Economic Development

DIAGRAM



DESCRIPTION

This project provides for a new public park adjacent a new MUSD elementary school located on McCandless drive in the Transit Area. The park will provide approximately 4 acres of City public park space, which will include play fields, athletic courts, parking, picnic area, play structure, and restrooms.

COMMENTS:

The first phase of this project is to coordinate the layout and schematic design of the new park with the adjoining MUSD elementary school to maximize both sites. The cost for construction, design and construction support services will be added once the schematic design phase is completed.

Uncommitted Balance as of 6/30/2014: $0

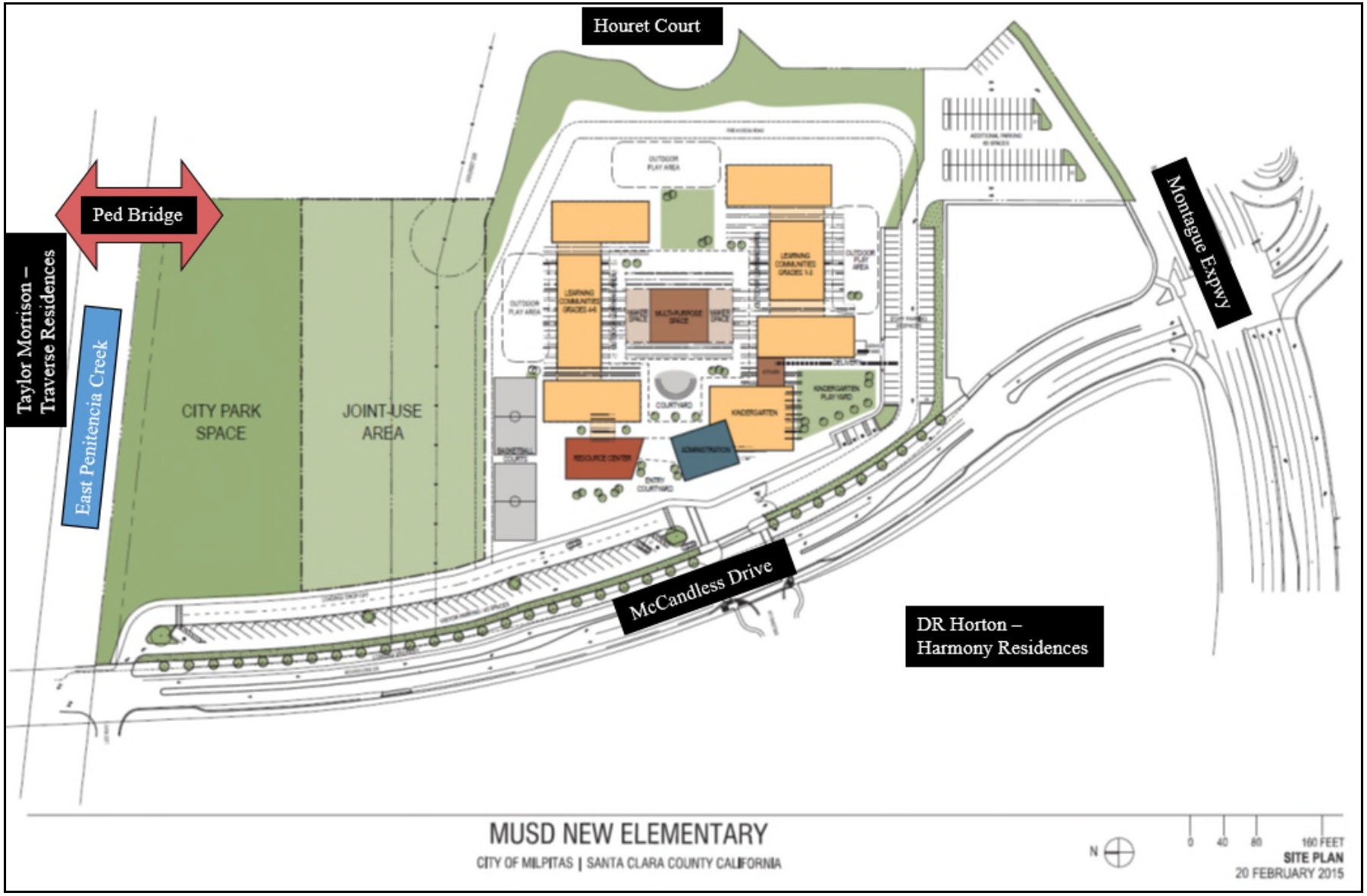
ESTIMATED COST	Prior Year	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Design	0	250,000	0	0	0	0	250,000
Administration	0	50,000	0	0	0	0	50,000
Totals	0	300,000	0	0	0	0	300,000

FINANCING	Prior Year	2014-15	2015-16	2016-17	2017-18	2018-19	Total
TASP Impact Fees	0	300,000	0	0	0	0	300,000
Totals	0	300,000	0	0	0	0	300,000

FINANCE NOTES

City Council 4/7/15 project created.

Figure 1 – Draft School Plan



*22E

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	350-2931 321-9515102-15-3899	$ 300,000 300,000	350-3999 321-9515102-1-4800 321-9515102-2-4800	$ 300,000 250,000 50,000

Explain the reason for the budget change:

Background: The Transit Area Specific Plan (TASP) has designated a large parcel located on the east side of McCandless near Montague Expressway as school and public park area. The Milpitas Unified School District is currently underway in their design of an elementary school for the portion of the site that the City will sell to the MUSD under a Purchase and Sale Agreement previously approved by the City Council. In addition, the MUSD is also acquiring some additional land to meet the needs for the school.

A portion of the City owned parcel will be used as joint-use for park and school recreation facilities. The scope of the McCandless City Park and Joint-Use School Project is to commence design of the City park and joint-use parcels to develop a state-of-the-art recreational facility for the community. The design effort for street frontage, trail connections, park amenities, and joint-use school area are required to develop the project from initial program studies through final construction.

The Planning and Neighborhood Services Department is requesting approval from the City Council to enter into a consultant agreement with Environmental Foresight, Inc. for high quality public outreach and landscape design services for the McCandless City Park and Joint-Use School Project site in the amount of Two Hundred Forty-Eight Thousand Four Hundred Dollars ($248,400).

Fiscal Impact: A budget appropriation in the amount of $300,000 from the Transit Area Specific Plan (TASP) Fund to the McCandless Park, Project No. 5102

Recommendation:

1. Approve a new CIP Project, McCandless Park and, Project No. 5102
2. Approve a budget appropriation of $300,000 from TASP Impact fees to the McCandless Park, Project No. 5102.
3. Approve an agreement with Environmental Foresight, Inc. in the amount not to exceed $248,400 to prepare the McCandless Park Project for a term from April 7, 2015 to June 30, 2019.

☒ **Check if City Council Approval required.** **Meeting Date**: April 7, 2015

Requested by:	**Steven McHarris, Planning & Neighborhood Services Director**	**Date:** March 27, 2015
Reviewed by:	**Finance Director:**	**Date:** 3/30/15
Approved by:	**City Manager:**	**Date:**
Date approved by City Council, if required:		**Confirmed by:**

MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Regular Meeting of Milpitas City Council**
Date:	**Tuesday, April 7, 2015**
Time:	**5:30 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas, CA**

CALL TO ORDER

Mayor Esteves called the meeting to order at 5:30 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo and Grilli

ABSENT: Councilmember Giordano was not present at the roll call. Mayor Esteves awaited her arrival to start, and did so at 5:33 PM.

STUDY SESSION

City Council convened for a Budget Study session for the first part of the meeting.

City Manager Tom Williams and Finance Director Emma Karlen presented the staff report to the City Council, with an overview of the proposed FY 2015-16 budget.

Councilmember Giordano asked about the process and information by department, since she would have questions on some of the department budgets.

Vice Mayor Montano inquired about where the largest number of employees had been laid off in the City several years ago. The City Manager responded that was in Public Works.

Councilmember Giordano asked questions about the City Attorney's request for the position of Deputy City Attorney to be added. City Attorney Mike Ogaz responded that the position would be able to do litigation work, and thus allow for less hiring of outside counsel. This would achieve more savings with in-house counsel. Councilmember Giordano asked for data looking back on costs of City Attorney's office from 2000 to the present, showing the cost of the contract City Attorney firm in the past versus current in-house services. Staff agreed to provide that.

Mayor Esteves commented that for special subjects, the City hired outside counsel. He asked if that was that part of the budget. The City Manager replied that the odor issue legal matters were outside of the budgeted costs.

Mayor Esteves said the reduction in the number of employees in 2013 should yield a footnote about contracting out landscape services, in the budget description.

Ms. Karlen reviewed a list of various Position Funding Requests, totaling $1.787 million, while identifying $716,000 that was available to pay for any added staff positions.

Councilmember Giordano inquired about Police staffing and justification for the request to add three police officers.

Mayor Esteves suggested consideration of the ratio of police officers per 1,000 residents, upon determining whether to add police officers to the new budget.

Chief Pangelinan answered questions about police at the Great Mall (4 officers) and the contract for the Mall to pay for three of those. He reported that 1.1 police officers per 1000 was the staff ratio in Milpitas while the county average was 1.2. With three additional police officers added, the average would be 1.2 and 88 total officers.

Vice Mayor Montano would like to see a satellite Police Department office at McCarthy Ranch in the future very soon.

Next staff presented some budget summary information in overhead slides, with graphs and charts.

Councilmember Grilli said she would like the information on the Deputy City Attorney referred to by Councilmember Giordano, before deciding on that position. Mayor Esteves asked for an explanation of costs for a Deputy City Attorney versus contracting out.

Mayor Esteves asked for the staff recommendation on a staff position for grantwriting, which was to hire a consultant rather than full time staff, where a person could be hired on contingency basis.

Councilmember Giordano requested a breakdown on residential versus commercial property tax revenue. Ms. Karlen responded she could get that information from Santa Clara County.

Councilmember Grilli asked about the costs for reorganization and reclassification of various City positions (in four bulleted recommendations) which staff explained.

Vice Mayor Montano asked the rate of pay for contracted janitors per hour. City Manager Williams said he could get that figure, based on the prevailing wage paid by the contractor and the agreement made with the South Bay Labor Council.

Mr. Karlen Emma explained PERS rate stabilization fund, and changing to the "Annual Required Contribution" approach to PERS contributions for the City of Milpitas. That would be in contrast to a stated percentage of payroll, as annually calculated to date.

Following the conclusion of the budget study session, then Mayor Esteves convened the start of the regular Council meeting at 7:13 PM.

PLEDGE Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION Councilmember Barbadillo read from the bible, and said prayers to start the meeting.

MEETING MINUTES Motion: to approve the minutes of March 17, 2015 City Council meeting

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

SCHEDULE OF MEETINGS Motion: to approve Council Calendar/Schedule of Meetings for April 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

PRESENTATION Mayor Esteves commended Alan Pham, Milpitas High School student, for his efforts at organizing the 2nd annual MHS Inter-School Science Fair.

PUBLIC FORUM Alvin White, Milpitas resident, remarked on his bicycle wheels that were removed from Selwyn Drive. He claimed that one of his vehicles was stolen by the Milpitas Police Department.

Robert Marini, Milpitas resident, commented on a new charge to customers proposed for use of credit card to pay city invoices. He gave his view on sewer rate calculations and of over-charges based on rates per number in a household.

City Attorney Mike Ogaz reported to the City Council that Mr. Marini was unsuccessful in his very recent latest attempt suing the City in small claims court regarding rates.

Liz Ainsworth, Milpitas Chamber of Commerce, announced the availabilty of the new City map just published by her organization. The monthly Chamber's business breakfast was off to a great start, with City participation. She highlighted the International BBQ and Festival event in May.

Sean Hissan and Muneerah Merchant from the Aga Khan Foundation, invited the City Council and students to attend upcoming event to focus on water conservation, held at Milpitas Senior Center this coming Saturday, April 11 from 10:00 AM to 3:00 PM, for young students in Milpitas.

Rob Means, 1421 Yellowstone, was concerned about global climate change.

Tom Valore, 25 year resident of Milpitas, referred to the last City Council meeting on the odor control report. He stated the public was never given a chance to comment.

Voltaire Montemayor, Milpitas resident, liked singing and dancing, and sought a location for a competition like American Idol in Milpitas.

ANNOUNCEMENTS

Councilmember Giordano met with Mr. Santos of SCVWD recently. She made note of a rebate program the District offered and could do so in partnership with the City. On April 11, the Knights of Columbus awards dinner was scheduled, and she highlighted the winners of Firefighter, Police Officer and Citizen of the Year. In closing, Councilmember Giordano asked to close in memory of Michael Johnson, the City of San Jose police officer killed in the line of duty.

Councilmember Grilli had heard from residents in the Pines neighborhood, affected by parking by new residents in developments nearby. She requested a report on how to deal with the parking issues in the Pines, and to seek a solution. The City Manager replied that the City Engineer could return with that report.

Mayor Esteves commented on water conservation, there should be an announcement on the required reduction in water use statewide. The Mayor urged all to conserve water together.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked the Mayor and Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

APPROVAL OF AGENDA

Motion: to approve the agenda

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

CONSENT CALENDAR

Councilmember Giordano stated that on agenda item No. 9 on the Ordinance regarding Town Center and no residential development, she would vote no. She requested removal of Item No. 15 on the resolution naming Newby Island as a public nuisance, and to move it to the next City Council meeting.

Vice Mayor Montano asked to remove items no. 12 (Resolution awarding contract for AudioVisual upgrade), no. 13 (Resolution for Main St. work), no. 17 (Maze firm for audit services) and no. 18 (contract for media services).

Councilmember Grilli supported moving item no. 15 to the next meeting because she wanted more information including an online petition which apparently 17,000 people signed.

City Attorney Ogaz responded he could provide the petition to the Council but was not sure he could get names of who signed it online.

Mayor Esteves suggested to remove the item from consent and have some preliminary discussion at this meeting. He did not think it mattered how many signed the petition.

Councilmember Giordano moved, and Councilmember Grilli seconded, a motion to remove all items identified by the Vice Mayor from consent and to push no. 15 to the next meeting. Her motion failed on a vote of 2 Ayes (Giordano, Grilli) and 3 Noes.

Motion: to approve the consent calendar, with removal of agenda items no. 12, no. 13, no. 15, no. 17 and no. 18 from consent for discussion

Motion/Second: Councilmember Grilli/Vice Mayor Montano

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

* 3. Commission Appointment	Newly appointed Michael Lee to the Community Advisory Commission as Alternate No. 3 to a term that will expire in January of 2016.
* 7. Fee Waiver	Per request from Our Lady of Guadalupe Club, approved fee waiver of $800.00 toward rental cost for the Community Center for Mother's Day Event on Saturday, May 9, 2015.
* 9. Adopt Ordinance	Waived the second reading and adopted Ordinance No. 38.820 amending the Town Center Zone prohibiting all new residential uses while allowing existing and previously approved residential uses to continue. The vote on this ordinance only was: 4 Ayes and 1 No (Giordano).
*10. Resolution	Adopted Resolution No. 8458 requesting allocation and making certain findings relating to Transportation Development Act, Article 3 Funds for 2016 Street Resurfacing Project.
*11. Resolution	Adopted Resolution No. 8459 granting initial acceptance of the Pinewood Park Improvements, Projects No. 3412, No. 5095, No. 5096, and No. 7116, subject to a one year warranty period, and reduction of the faithful performance bond to $181,797.45; and granting authorization to the Director of Engineering to issue the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further City Council action.
12. Resolution related to Audio Visual upgrade	This matter was removed from consent and was not heard.
13. Resolution related to Main Street Pavement contract	This matter was removed from consent and was not heard.
*14. Resolution	Adopted Resolution No. 8460 approving an agreement with Central Medical Laboratory, Inc. for drug and alcohol testing in the annual not-to-exceed amount of $19,500.00 and for a term from April 15, 2015 to April 14, 2016; and authorized the City Manager to extend the term of the agreement on an annual basis for up to four years with an annual increase of no more than 5% per year, without further City Council approval except appropriation of funds.
15. Resolution Declaring Public Nuisance	This matter was removed from consent and was not heard.
*16. Amendment to Agreement with Ted S. Farr for EMS Data	1) Approved Amendment No. 1 to the consultant agreement with Ted S. Farr in the additional compensation amount of $15,000 for implementation of the countywide Comprehensive EMS Patient Care Data System. 2) Appropriated funding to the Fire Department's operating budget in the amount of $53,575.04 from the Santa Clara County Emergency Medical Services trust fund.

17. Maze & Associates audit	This matter was removed from consent and was not heard.
18. Modern Day Marketing	This matter was removed from consent and was not heard.
*19. Agreements with County	Approved two agreements with the County of Santa Clara for collection of AB939 Implementation Fees and administration of the Countywide Household Hazardous Waste Collection Program.
*20. Amend Agreement with RMC Water & Environment	Approved Amendment No.1 to the Consultant Services Agreement with RMC Water and Environment, Inc. for Utility Engineering support in the amount of $58,000 and for a term through December 31, 2015.
*21. Agreements with Harris & Associates and CSG	Approved agreements with Harris & Associates, Inc. in the amount of $80,000 and with CSG Consultants, Inc. in the amount of $70,000 for terms from April 7, 2015 to December 31, 2015 for engineering support services.
*22. New CIP for McCandless Park	Approved new project in the Capital Improvement Program - Project No. 5102 for McCandless Park. Approved a budget appropriation of $300,000 from Transit Area Specific Plan (TASP) impact fees to the new CIP No. 5102. Approved an agreement with Environmental Foresight, Inc. in the amount not to exceed $248,400 to prepare the McCandless Park Project No. 5102 for a term from April 7, 2015 to June 30, 2019.
*23. Approve Payment to Jensen School	Per existing agreement with Jensen School of Performing Arts for Pre-K Enrichment and Youth Program classes, authorized payment in the amount of $40,000.

PUBLIC HEARING

1. Ordinance requiring funding for Public Art by developers

Senior Planner Adam Petersen provided description of the proposed requirement for public art and to create a fund that developers would pay into for art works in the City, based on a similar ordinance in the City of Emeryville. 1% of the project cost would go into the fund, as proposed in the draft City ordinance.

Councilmember Giordano thought the rate was a little high and asked about the recommendation from the Planning Commission.

Vice Mayor Montano asked if the ordinance was reviewed by the Arts Commission and would that group review any public art built at a project (if developer did not pay the fee). She'd like the ordinance to state that art could include murals and other mediums, even plants. She urged the promotion of historic preservation of city in this ordinance too.

Staff reported that 1% of funds could be used toward maintenance of art work, including historic pieces.

Councilmember Barbadillo asked questions about the type of art projects at high value developments, how they would be determined for their financial worth, and whether developer would pay the difference to the City if the art piece was valued at a number lower than 1% of project cost. He urged that to be a condition of approval or required within the ordinance.

City Attorney Ogaz replied that he could provide new language in the ordinance at the second reading (next meeting) and be flexible to developers.

Mayor Esteves asked about affordable housing, excluded from this requirement. That term needed to be defined clearly and asked for that to be updated in the revised text of the ordinance at next meeting. The Mayor also wanted to know who would decide if art work was one that applied to the fund or was already part of the architecture of the building. He had further questions and concerns about the art's financial value.

Next, the Mayor opened the public hearing.

Robert Marini, Milpitas resident, felt there would be conflict of interest when imposing a fee on developers to build art work on new developments. That was not fair to the public nor to developers.

Councilmember Giordano said developers already pay a lot of impact fees on new development. The public gave input at public hearings on new proposals.

Voltaire Montemayor, Milpitas resident, said there would be an upgrade from the standard. He wanted Milpitas to be beautiful and agreed on adding art in Milpitas. A third party should decide valuation of the art.

(1) Motion: to close the public hearing, after hearing speakers

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

City Attorney Mike Ogaz read aloud the title of Ordinance No. 38.821, "An Ordinance of the City Council of the City of Milpitas Amending Chapter 10 of Title XI of the Milpitas Municipal Code Adding Section 14 to the Zoning Code Relating to Public Art Requirements for Private Development."

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.821

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(3) Motion: to introduce Ordinance No. 38.821 regarding public art requirements

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Mayor Esteves expressed that he wanted included in the motion that the ordinance would include affordable housing as defined, and that the value or cost of the art work should be affirmed by the City.

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

UNFINISHED BUSINESS

2. Odor Control Update

City Engineer Steven Machida updated City Council with number of complaints about odor, as reported both to the City and to the Bay Area Air Quality Management District hotline. He announced that on Thursday, April 23, 2015 from 6:00 – 8:00 PM, the BAAQMD would hold a public meeting on its roles and strategies to deal with odor in the city as result of hotline complaints.

Councilmember Giordano mentioned the online petition, and a number of those who signed. She asked Mr. Machida if she could know how many complaints came from Milpitas residents and he replied he could get back to her with that information.

Vice Mayor Montano reported that she had visited Newby Island Landfill recently, and saw where they do the composting. That was where she noticed the bad smell which was more frequent now than in the past.

Jeanne Serpa of Republic Services came to podium to describe when composting started at Newby Island, approximately in the mid-1990s, so for close to twenty years. She responded to additional questions from the Vice Mayor.

Next, Mayor Esteves invited speakers.

Tom Valore, Milpitas resident, wanted to go back to the March 17 meeting agenda and report on this issue. He took issue with some of the comments in the prior report. So far, only anecdotal information had been presented, not scientific data. No one had definitively determined the source of odor in Milpitas and he also took issue with the $800,000 figure as an impact to the City.

Don Litchfield, of Republic/Newby Island, said more information had been collected in the last few months. Odor issue was getting out of control since November while a solution had been found. Odor mitigation had been implemented, but now they were expanding capacity. It was necessary to determine other sources of odor in the area.

Mayor Esteves commented that the issue had been around for decades so he asked why Republic was only coming forward now. Mr. Litchfield replied and tried to answer several comments and questions from the Mayor. Mr. Litchfield offered several times to provide an on-site tour to City Council to view recent mitigation measures in place.

Vice Mayor Montano asked if there was any difference in the last five months, since she last visited. Mr. Litchfield replied yes, significantly.

The Mayor invited additional speakers to the podium.

Robert Marini, Milpitas resident, commented on the odor issues in Milpitas.

Liz Ainsworth, Milpitas resident, talked about various locations she had lived in town and the need to get rid of the smell. She was frustrated as the Mayor was. The concern she had was that there were multiple sources. So much time was spent looking at Newby Island and the City might deal with that source, but then the smell could still be there. So it was important to find out what the cause was.

Voltaire Montemayor, Milpitas resident, was determined that the City would solve the problem of odor.

Jennifer, a 15 year resident of Milpitas, noted 6,000 was the number of online signers to the petition and about 4,000 signed going door to door on paper petitions from Milpitas. She gave numbers of those who signed from Fremont and San Jose too. She discussed a landfill in southern California, where it was expanded and then thousands of complaints followed after the expansion. She urged stopping the expansion of Newby Island.

Councilmember Grilli asked her if she would produce the petition to City staff. The speaker did agree to do so and send it to the City Attorney.

Motion: to receive the oral report from the City Engineer on odor update

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

At 9:18 PM, City Council took a break.

When they returned, Vice Mayor Montano recommended a motion to reschedule the 9:00 PM Special Meeting and that was seconded by Councilmember Grilli.

City Manager Williams asked if the City Council could agree that he receive information that generated the Special Meeting agenda be provided to him by the City Attorney.

Councilmember Giordano wanted to hear the matter urgently on this night. Otherwise, she knew there was a long agenda already.

Vice Mayor Montano then rescinded her motion.

Motion: to continue with the spirit of the scheduled meeting agenda: adjourn the regular meeting and go into Closed Session Special Meeting as scheduled for 9:00 PM, with the remaining items on the regular agenda to be rescheduled to the next meeting date

Motion/Second: Councilmember Giordano/Councilmember Barbadillo

Motion carried by a vote of: AYES: 3
NOES: 2 (Esteves, Montano)

The regular City Council meeting was thus adjourned at 9:32 PM.

4. CalPers Report by Ron Lind — This matter was not heard.

5. City Web Site — This matter was not heard.

6. Solid Waste Program report — This matter was not heard.

8. PERS Amendment — This matter was not heard.

ADJOURNMENT — Mayor Esteves adjourned the meeting at 9:32 PM.

The foregoing minutes were approved by the Milpitas City Council on April 21, 2015.

_____

Mary Lavelle
Milpitas City Clerk