



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, OCTOBER 4, 2022

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

7:00 PM (PUBLIC BUSINESS)

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-2400

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3072

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

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

Meeting shall be livestreamed - Go to:

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

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

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

PUBLIC COMMENT INSTRUCTIONS

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

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_3MBYhvxbTS2LHXVYnxiOXQ

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

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

MILPITAS CITY COUNCIL CODE OF CONDUCT

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

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

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Chua)

PRESENTATIONS (7:05 PM)

- Fire Prevention Week (Proclamation)
- Indigenous Peoples' Day (Proclamation)
- Hindu American Awareness and Appreciation Month (Proclamation)
- Clean Air Day (Proclamation)

PUBLIC FORUM (7:15 PM)

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

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

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (7:20 PM)

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

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR (7:30 PM)

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

- C1.** Receive City Council Calendar of Meetings for October 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for October 2022.

- C2.** Approve City Council City Council Regular Meeting Minutes of September 20, 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Regular Meeting minutes of September 20, 2022.

C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

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

C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

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

C5. Reconfirm Findings and Determinations Under Resolution No. 9165 and Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)

Recommendation: Move to reconfirm findings and determinations under Resolution No. 9165 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

C6. Consider the Recommendation from Mayor Tran for Appointment to City Commissions (Contact: Mayor Tran, 408- 586-3029)

Recommendation: Receive the recommendation from Mayor Tran and approve appointments to City Commissions.

C7. Waive the Second Reading and Adopt Revised Ordinance No. 38.846 Amending Sections of Chapter 10, Title XI of the Milpitas Municipal Code Relating to Non-Residential Building Heights in the C2 General Commercial, HS Highway Services, and TC Town Center Zoning Districts (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Recommendation: Move to waive the second reading and adopt Ordinance No. 38.846 amending sections of Chapter 10 of Title XI of the Milpitas Municipal Code relating to maximum building heights in certain zoning districts

C8. Report on Bids and Award Construction Contract to Mercoza, Inc. in the Amount of \$344,928.00 for the Annual Sidewalk, Curb, and Gutter Repair Project (Staff Contacts: Roger Lee, Interim Public Works Director, 408-586-2602; and Chris Schroeder, Purchasing Agent, 408-586-3161)

Recommendation: (1) Receive report on bids and award a construction contract to the lowest responsible and responsive bidder, Mercoza Inc., in the amount of \$344,928.00 for the Annual Sidewalk, Curb, and Gutter Repair Project; and (2) Authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$35,000.00.

C9. Adopt a Resolution Accepting and Authorizing the City Manager to Execute a Sole Source Purchase for Procurement of six (6) LIFEPAK 15 V4 Monitor/Defibrillators from Stryker Sales Corporation in the Amount of \$220,107.43, Net of Credit (Staff Contact: Brian Sherrard, Fire Chief, 408-586-2811; and Kenju Suzuki, EMS Battalion Chief, 408-586-2824)

Recommendation: Adopt a resolution accepting and authorizing the City Manager to execute the Sole Source Purchase of six (6) LIFEPAK 15 V4 Monitor/Defibrillators with Stryker Sales Corporation in the amount of \$220,107.43, net of credit; and approve a budget appropriation into the Fire Department's FY 2022-23 operating budget.

C10. Authorize the City Manager to Execute a Contract with Colliers Parrish International Contract for Real Estate Services (Staff Contact: Alex Andrade, Director of Economic Development, 408-586-3046)

Recommendation: Authorize the City Manager to execute a contract with Colliers Parrish International for real estate services related to the disposition of property located at 1432-1446 South Main Street, for a fee of four percent (4%) of the final gross sales price.

C11. Accept Funding from the Association of Bay Area Governments (ABAG) for the Management of the Regional Early Impact Planning (REAP) Grant (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing and Neighborhood Services Administrator, 408-586-3275)

Recommendation: Authorize the City Manager to accept grant funding from the Association of Bay Area Governments (ABAG) for the Management of the Regional Early Impact Planning (REAP) Grant and approve related budget amendments for revenue in the amount of \$142,718.00 (\$62,823 for FY21-22 and \$79,895 for FY22-23).

C12. Adopt a Resolution to Amend the City of Milpitas Classification Plan to Establish the Position of Risk Analyst and Modify the Salary Schedule Titled "All Job Classifications/Salary Table" to Include the Salary Range for this Classification (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Jeannine Seher, Human Resources Director, 408-586-3086)

Recommendation: Adopt a resolution amending the Classification Plan to establish the position of Risk Analyst and amend the Salary Schedule titled "All Job Classifications/ Salary Table" to include the salary range for this classification.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (7:45 PM)

13. Proposed Revisions to the City Council Policy for Donations for City Parks and Recreation and Community Services Programs (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Recommendation: Approve proposed revisions to the City Council Policy for Donations for City Parks and Recreation and Community Services Programs.

LEADERSHIP AND SUPPORT SERVICES (8:15 PM)

14. Receive an Update on the American Rescue Plan Act and Provide Direction to Staff (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Lauren Lai, Director of Finance, 408-586-3111)

Recommendation: Receive an update on the American Rescue Plan Act (ARPA) programs and provide direction to staff.

ADJOURNMENT (9:00 PM)

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other City agencies exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's

office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

e-mail: mmutalipassi@milpitas.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.milpitas.gov by selecting the Milpitas Municipal Code link.

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

APPLY TO SERVE ON A CITY COMMISSION

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

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

September 2022						
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	

MILPITAS CITY COUNCIL CALENDAR

October 2022

November 2022						
S	M	T	W	Th	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			

Item # C1.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1 10:00 AM -Filipino American History Month Flag Raising (Cesar Chavez Plaza)
2	3 4:00 PM -Special Economic Development and Trade Commission (KD) 7:00 PM -Parks, Recreation & Cultural Resources Commission (CM)	4 7:00 PM -City Council	5 2:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) 5:30 PM -Veterans Commission (RT) 7:00 PM -Community Advisory Commission (EC)	6 5:30 PM -Milpitas Chamber of Commerce Board (EC) 5:30 PM -Santa Clara VTA Board of Directors (CM)	7	8
9	10	11 4:00 PM -Milpitas HOPE Suicide Prevention Task Force	12 4:00 PM -Transportation Subcommittee (RT/CM) 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino) 7:00 PM -Planning Commission	13 4:00 PM -Santa Clara VTA Policy Advisory Committee (AP) 7:00 PM -Youth Advisory Commission (EC) 6:00 PM -Cities Assoc of SCC Legislative Action Committee (CM) 7:00 PM -Cities Assoc of SCC Board of Directors (CM)	14 4:00PM-8:00PM -Art Walk @ Murphy Park *4:30 PM -City Council Finance Subcommittee (RT/CM)	15 10:00AM -Montague Pedestrian Overcrossing Mural Unveiling (753 Montague Expressway) 2:00PM -Phantom Art Gallery (Library)
16	17 7:00 PM -Science, Technology, and Innovation Commission (RT)	18 7:00 PM -Closed Session 7:00 PM -City Council	19 6:00 PM -Energy and Environmental Sustainability Commission (EC)	20 8:30 AM -Fire Station #2 Grand Opening 10:00 AM -VTA Congestion Mgmt Prog. Planning (CM) 10:30 AM -Quarterly South Bay Odor Stakeholders Group Meeting (RT)	21	22 10:00 AM-1:00PM -Pumpkins in the Park @ Cardoza Park
23	24	25 1:30 PM -Senior Advisory Commission (EC) 3:00 PM -Odor Reduction Ad Hoc Subcommittee (tent) (RT/CM) 5:30 PM -Special Council Meeting (tent)	26 5:00 PM -Alviso Adobe Ribbon Cutting Ceremony 5:30 PM -Cities Assoc. of SCC - Recycling and Waste Reduction Commission (AP) 7:00 PM -Planning Commission	27 12:00 PM -SCC Library JPA Board of Directors Mtg (EC)	28 4:00 PM -City/School Collaborative Subcommittee – MUSD Hosting (RT/CM)	29 3:00 PM-7:00PM -Dia de los Muertos @ Cardoza Park
30	31 					

**Finance Subcommittee will meet only as needed*



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES
TUESDAY, SEPTEMBER 20, 2022

The City Council of the City of Milpitas convened on the regular City Council meeting day of June 21, 2022, in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas, and via teleconference/Zoom webinar.

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

Mayor Tran called the regular City Council meeting to order at 7:02 PM. Roll call was taken by Acting City Clerk Guzzetta.

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

ABSENT: None.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Tran.

INVOCATION

Councilmember Dominguez led the invocation, reciting the poem "Still I Rise" by Maya Angelou.

PRESENTATIONS

Mayor Tran presented proclamations recognizing Ovarian Cancer Awareness Month and Hispanic Heritage Month.

PUBLIC FORUM

The following people spoke under Public Forum:

1. Loreto Quevedo Dimaandal
2. Voltaire Montemayor
3. Lusi Wang spoke and submitted petitions
4. Hien La
5. Hang Nguyen
6. A Sunnyhills Resident
7. Khai Tran
8. A Sunnyhills Resident
9. Allysson McDonald
10. Staff member for Community Land Trust
11. Inderjit Mundra, Milpitas Chamber of Commerce
12. Johanna B
13. Tiffany Vuong

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

City Manager McHarris announced the Filipino Flag Raising would occur on Saturday, October 1, 2022 at 10 AM at Caesar Chavez Plaza at Milpitas City Hall, and that the Milpitas Police Department will host "Coffee with a Cop" on Thursday, September 29, 2022 from 9-11 AM at the Starbucks on 120 Milpitas Boulevard.

Mayor Tran announced the 626 Night Market Mini on Saturday at the Great Mall.

Councilmember Phan spoke to affordable housing concerns from public forum speakers.

Councilmember Chua questioned the City Attorney if there is a policy regarding foreign languages spoken at the dais, and made the following requests:

1. Requested the City Attorney or City Manager draft a written policy regarding foreign language spoken at the dais. Mayor Tran requested that an independent third-party translator be utilized in the policy.
2. Asked the City Manager to look into defining either a standalone teen center or updating information to indicate that the Senior Center also functions as a Teen Center.
3. Requested the City Attorney to explore strengthening ethics education and policies for City Councilmembers.
4. Asked for City Manager to create a PSA (public service announcement) on best practices to prevent package theft for residents.

Councilmember Chua presented slides on Library statistics presented at the Library and Education Advisory Commission and announced the Citizens' Advisory Commission Spring Cleanup on Saturday, September 24, 2022 at the Mobilodge of Milpitas.

Vice Mayor Montano commended participants, coordinators, staff, City Council, and the community for their participation in the Mexican Flag Raising.

Councilmember Dominguez made the following requests:

1. Asked staff to look into construction in the Sunnyhills area;
2. Requested sharing or developing a City policy for Flag Raising Ceremonies including procedure for presentation of the colors and performance of the national anthem.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

READING OF THE CITY COUNCIL CODE OF CONDUCT

Mayor Tran read the Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the September 20, 2022 Regular Meeting Agenda.

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

CONSENT CALENDAR

There were the following speakers:
Mike Katz-LaCabe

Motion: to approve the consent calendar pulling Item 18 from the consent calendar to be heard after Item 20.

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

C1. Receive City Council Calendars of Meetings for September and October 2022 (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)

Received City Council Calendars of Meetings for September and October 2022.

C2. Approve City Council City Council Regular Meeting Minutes of September 6, 2022 (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)

Approved City Council Regular Meeting minutes of September 6, 2022.

C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)

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

C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)

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

C5. Adopt a Resolution Updating the Conflict of Interest Code in 2022 and Amending List of Designated Disclosure Positions for the City of Milpitas (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001; and Michael Mutalipassi, City Attorney, 408-586-3041)

Adopted **Resolution No. 9190** updating the 2022 City of Milpitas Conflict of Interest Code, including the list of designated positions required to annually file the FPPC Form 700 Statement of Economic Interests.

C6. Accept the FY 2021-22 Commissioners Annual Report for Six (6) Commissions and Approve Six (6) City of Milpitas Commission Work Plans for FY 2022-23 (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Walter C. Rossmann, Deputy City Manager, 408-586-3012)

Accepted the 2021-22 Commissioners Annual Report; and approved the proposed Fiscal Year 2022-23 Work Plans for the Arts Commission, Library and Education Commission, Parks, Recreation and Cultural Resources Commission, Senior Advisory Commission, Veterans Commission, and Youth Advisory Commission.

- C7. FY 2021-22 Fourth Quarter Financial Status Report, Fund Balances Thereof and Related Budget Amendments to Close-out the FY 2021-22 Budget (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**

Reviewed the FY 2021-22 Quarterly Financial Status Report for the quarter ending June 30, 2022 (unaudited); and approved budget, contingency and reporting recommendations.

- C8. Authorize the City Manager to Execute a Master Encroachment Agreement for Mobilitie, LLC, a Nevada Limited Liability Company for Installation of Network Facilities Within Public Right-of-Way (Staff Contact: Steve Erickson, Engineering Director/City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Authorized the City Manager to execute a Master Encroachment Agreement for Mobilitie, LLC, a Nevada Limited Liability Company, for installation of network facilities within the public right-of-way.

- C9. Approve and Authorize the City Manager to Execute a Sole Source One-Year Agreement with CentralSquare Inc. for Maintenance and Support of the Public Safety Computer Aided Dispatch System for the Not-to-Exceed Amount of \$129,264.92 (Staff Contact: Daniel Nam, Information Technology Director, 408-586-2712)**

Approved and authorized the City Manager to execute a sole source one-year agreement with CentralSquare Inc. for maintenance and support of the Public Safety Computer Aided Dispatch System for the not-to-exceed amount of \$129,264.92, pending final approval by City Attorney.

- C10. Authorize and Approve Travel to Anaheim, CA for City Manager Steve McHarris to Attend the Annual Conference of the American Planning Association – California Chapter – to be held October 1 – 4, 2022. (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)**

Authorized and approved travel to Anaheim, CA for City Manager Steve McHarris to attend the Annual Conference of the American Planning Association – California Chapter – to be held October 1 – 4, 2022, for an estimated not-to-exceed amount of \$2,500 budgeted under Conferences/Trainings allocation for the City Manager's Office.

- C11. Adopt a Resolution Authorizing the City Manager to Execute the Extension of the Sole Source Services Agreement with Flock Group Inc. for Automated License Plate Reader (ALPR) Cameras in an Amount Not-to-Exceed \$314,750.00 and Renew the Agreement for One Three-Year Period Subject to Annual Appropriation of Funds. (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406)**

Adopted **Resolution No. 9191** authorizing the City Manager to execute the extension of the sole source services agreement with Flock Group, Inc. for Automated License Plate Reader (ALPR) Cameras in an amount not-to-exceed \$314,750 and renew the agreement for one three-year period subject to annual appropriation of funds; and authorize the Chief of Police to execute contract change orders in an aggregate amount not to exceed \$78,500.00.

- C12. Award IFB 23-009 and Authorize the City Manager to Execute the Purchase Order with Iteris Inc. for the Purchase of Thirty Iteris Traffic Cameras for the Not-to-Exceed Amount of \$125,606.25 (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602; and Chris Schroeder, Purchasing Agent, 408-586-3161)**

Awarded IFB 23-009 and authorized the City Manager to execute the purchase order with Iteris Inc. for the purchase of thirty Iteris traffic cameras for the not-to-exceed amount of \$125,606.25.

- C13. Approve and Authorize the City Manager to Execute the Five-Year General Services Agreement with Aramark Uniform Service for Citywide Uniform, Mat, and Linen Services for the not-to-exceed amount of \$240,916.30 (Staff Contact: Chris Schroeder, Purchasing Agent, 408-586-3161)**

Approved and authorized the City Manager to execute the five-year General Services Agreement with Aramark Uniform Service for Citywide Uniform, Mat, and Linen Services for the not-to-exceed amount of \$240,916.30.

- C14. Consider Sunnyhills Neighborhood Association Fee Waiver Request (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Approved a fee waiver of \$1,317.00 for the Sunnyhills Neighborhood Association Halloween Event scheduled for October 29, 2022.

- C15. Consider Korean Language and Culture Foundation's Annual Korean Alphabet Event Donation Request (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Approved a donation of \$500.00 for the Korean Language and Culture Foundation's annual Korean Alphabet Event scheduled for October 2, 2022.

- C16. Consider the Recommendations from Mayor Tran for Appointments to City Commissions (Contact: Mayor Tran, 408- 586-3029)**

Received the recommendation from Mayor Tran and approved appointments to the Energy and Environmental Sustainability Commission and Youth Advisory Commission.

- C17. Accept Commissioner Resignations (Staff Contact: Suzanne Guzzetta, Acting City Clerk, 408-586-3001)**

Accepted the resignation of Khloe Cruz from the Youth Advisory Commission and Dana Arbaugh from the Library and Education Advisory Commission; and direct the Acting City Clerk to post the notice of unscheduled vacancy.

- C18. Second Reading of Ordinance No. 228.1 of the City Council of the City of Milpitas Adding Chapter 9 ("Use Of Rights-Of-Way And Public Property") to Title X ("Streets And Sidewalks") of the Milpitas Municipal Code and Adding Section X-10-1.03 to Chapter 10 ("Structures Or Objects On Sidewalks Or Public Ways") to Title X ("Streets And Sidewalks") of the Milpitas Municipal Code (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3041)**

Item removed from Consent.

PUBLIC HEARINGS

- 19. Conduct a Public Hearing and Introduce Ordinance No. 38.846 Amending Sections of Chapter 10, Title XI of the Milpitas Municipal Code Relating to Non-Residential Building Heights (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**

Planning Director Thomas presented the report.

Mayor Tran opened the public hearing

There were the following speakers:

1. Barbara Jo Navarro
2. Allysson McDonald

3. Voltaire Montemayor
4. Yolie Garcia
5. Bill Korbe
6. Frank Bush

Mayor Tran closed the public hearing.

City Attorney Mutalipassi read aloud the title of the ordinance.

Motion: to waive the first reading beyond the title and introduce **Ordinance No. 38.846** amending sections of Chapter 10 of Title XI of the Milpitas Municipal Code relating to Non-Residential Building Heights and determine that the Municipal Code amendment is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a General Plan) and 15061(b)(3) (Common Sense Exemption)

Motion/Second: Vice Mayor Montano / Mayor Tran

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

20. Conduct a Public Hearing and Approve the Draft FY 2021-2022 Community Development Block Grant's (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER) (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing and Neighborhood Services Administrator, 408-586-3275)

Economic Development Director Andrade introduced the item. Housing and Neighborhood Services Administrator Musallam presented the report.

Mayor Tran opened the public hearing

There were the following speakers:

1. Loreto Dimaandal
2. Voltaire Montemayor

Mayor Tran closed the public hearing.

Motion: to approve the draft FY 2021-2022 Community Development Block Grant's (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER); and authorize the City Manager, or designee, to make any necessary changes and submit the approved Draft FY 2021-2022 CAPER to the U.S. Department of Housing and Urban Development (HUD) to comply with CDBG requirements

Motion/Second: Mayor Tran / Vice Mayor Montano

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

ITEMS PULLED FROM CONSENT

C18. Second Reading of Ordinance No. 228.1 of the City Council of the City of Milpitas Adding Chapter 9 ("Use Of Rights-Of-Way And Public Property") to Title X ("Streets And Sidewalks") of the Milpitas Municipal Code and Adding Section X-10-1.03 to Chapter 10 ("Structures Or Objects On Sidewalks Or Public Ways") to Title X ("Streets And Sidewalks") of the Milpitas Municipal Code (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3041)

City Attorney Mutalipassi presented the report and responded to questions from City Council.

There were the following speakers:

1. Loreto Dimaandal
2. Allysson McDonald
3. Voltaire Montemayor
4. Yolie Garcia
5. Tom Valore
6. Barbara Jo Navarro
7. Robert Means

Councilmember Dominguez voiced concerns about rights to assemble and proposed an amendment to the ordinance protecting the right to assemble in a public space.

Councilmember Chua clarified the City has a process in place regarding public assembly.

Mayor Tran responded to Councilmember Dominguez's concerns and suggested bringing back an item amending the ordinance to provide protection for the right to assemble.

Vice Mayor Montano raised clarifying points regarding existing language in the report that would protect the right of assembly.

After discussion, Motion: to waive the second reading and adopt **Ordinance No. 228.1** of the City Council of the City of Milpitas adding Chapter 9 ("Use Of Rights-of-way and Public Property") to Title X ("Streets and Sidewalks") of the Milpitas Municipal Code and adding Section X-10-1.03 to Chapter 10 ("Structures or Objects on Sidewalks or Public Ways") to Title X ("Streets and Sidewalks") of the Milpitas Municipal Code

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

AYES: Councilmember Chua, Vice Mayor Montano, Mayor Tran

NOES: Councilmembers Dominguez, Phan.

COMMUNITY DEVELOPMENT

21. 6th Cycle Draft Housing Element (2023-2031) (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Alex Andrade, Economic Development Director, 408-586-3046)

Assistant Director Kantak and Economic Development Director Andrade introduced the item. Hanson Hom, Raimi & Associates Consultant Eric Yurkovich, and Thomas Silverstein from the Lawyers Committee presented the report.

There were the following speakers:

1. Loreto Dimaandal
2. Allysson McDonald
3. Voltaire Montemayor

Vice Mayor Montano commented on unrealistic RHNA allocations for cities in Santa Clara County, voiced concerns with State requirements not applying to school districts and questioned how fair housing would be enforced.

Councilmember Chua emphasized the importance of balance between commercial, industrial, and residential, and asked when the item returns that they reduce the staff-identified surplus housing numbers so that commercial and industrial sites are not touched.

Councilmember Phan thanked staff and discussed the City's need to expand affordable housing inventory, work on anti-displacement measures, and address RHNA numbers in the low and very low AMI ranges. He asked for a program to bring unpermitted and non-compliant ADUs into compliance.

After discussion, Council received the report.

LEADERSHIP AND SUPPORT SERVICES

22. Discussion of State Funding Plan for Bike Lanes Facilities Enhancement and Homelessness Prevention and Unhoused Services (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Walter C. Rossmann, Deputy City Manager, 408-586-3012)

Assistant City Manager Kantak presented the report, and joined by Deputy City Manager Rossmann, responded to questions from the City Council.

There were the following speakers:

1. Loreto Quevedo Dimaandal
2. Voltaire Montemayor
3. Allysson McDonald
4. Robert Means

Mayor Tran thanked staff and the Milpitas Homelessness Task Force for their work and proposed transferring a portion of the funds from the mobile shower item to the navigation center.

Councilmember Phan cautioned that Council needed to be mindful of funding requirements and intentions and ensure that state funding was dedicated to services.

Councilmember Chua emphasized the importance of getting more money or grants for ADUs and asked staff to ensure the assessment program remains funded beyond 2023.

Councilmember Dominguez suggested City Council avoid transferring funds from the scope of work in the original funding requests, and voiced opposition for moving any funding away from mobile showers. She asked to see the mobile shower sign-in sheets when staff returns with the item.

After discussion, Council received the report.

ADJOURNMENT

Mayor Tran adjourned the meeting at 11:35 PM

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

Item # C3.

as of 9/29/2022

October 18, 2022 – 3rd Tuesday

CLOSED SESSION

INVOCATION (assigned to Councilmember Chua)

PRESENTATION

- October 1-31, 2022 as Breast Cancer Awareness Month (Proclamation)
- Diwali (Proclamation)

CONSENT CALENDAR

1. Receive City Council calendar for October and November 2022 (Suzanne Guzzetta)
2. Approve City Council Regular Meeting Minutes of October 4, 2022 (Suzanne Guzzetta)
3. Preview list of items for November 1, 2022 (Suzanne Guzzetta)
4. Councilmember Request List (Suzanne Guzzetta)
5. Approve City of Milpitas Commission Work Plans for FY 2022-23 (Walter Rossmann and Ashwini Kantak)
6. City Commission Appointments (Suzanne Guzzetta)

PUBLIC HEARING

7. Introduction and 1st Reading of Zoning Ordinance Amendment for Personal Services (Ned Thomas)
8. Adopt a Resolution Approving and Receiving the Department of Housing and Community Development Permanent Local Housing Allocation (Alex Andrade)

COMMUNITY DEVELOPMENT

9. Introduction and 1st Reading of 2022 Title 24 Building Code Adoption (Bill Tott)
10. Introduction and 1st Reading of All-Electric and EV Reach Codes for the 2022 Green Building Code (Bill Tott)
11. Introduction and 1st Reading of 2022 Title 24 Fire Code Adoption (Arthur Belton)

COMMUNITY SERVICES

12. Youth Sports Scholarship Program City Council Policy (Renee Lorentzen)

PUBLIC SAFETY

13. Receive a Report on the Crossing Guard Program and Provide Feedback to Staff (Jared Hernandez)

LEADERSHIP

REPORTS

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

OPEN ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
1	City Attorney or City Manager draft a written policy regarding foreign language spoken at the dais	Chua	9/20/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
2	City Manager to look into defining either a standalone teen center or updating information to indicate the Senior Center also functions as a Teen Center	Chua	9/20/2022	Staff is evaluating this request
3	City Manager to create a PSA (public service announcement) on best practices to prevent package theft for residents	Chua	9/20/2022	Staff responded via email on September 23, 2022.
4	Staff look into construction in the Sunnyhills area	Dominguez	9/20/2022	Staff is following up on this request and will send a status update to Council
5	Share or develop a City policy for Flag Raising Ceremonies including procedure for presentation of the colors and performance of the national anthem	Dominguez	9/20/2022	Staff responded via email on September 27, 2022.
6	Schedule an additional ADU workshop	Chua	9/6/2022	Staff is evaluating this request
7	Waiver for the Halloween Event sponsored by Sunnyhills Neighborhood Association	Dominguez	9/6/2022	The City Council approved the fee waiver at the 9/20/22 City Council meeting
8	City Attorney investigate moving the City Clerk's office into a direct report to the City Council.	Chua	8/16/2022	The City Attorney issued a memorandum to the City Council on August 30, 2022.
9	City Manager or Deputy City Manager to look into underutilized areas of parks or a portion of parks not being used and develop for use in the future.	Chua	8/16/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
10	Discuss converting vacant lot that was a basketball court into a community garden at Vasona and Adobe	Montano	8/16/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
11	City Manager look into implementing a workshop for small businesses on the bidding process for projects in the city	Chua	8/9/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
12	Memory bench at Sunny Hills Park for one of the founders, Dave Vohlberg, and to explore other historical plaques or benches to remember our history	Tran	8/9/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
13	Review of the Milpitas Chamber of Commerce previously approved request for funding including a financial report dating back 12 months and the workplan for the Art & Wine Festival	Tran	8/9/2022	Staff is working with the Chamber to obtain the requested documentation
14	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	PD will present quarterly reports starting in November 2022.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
15	Funding to hire a consultant for the Sunnyhills Historical Designation on a state level	Tran	6/7/2022	Request will be included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program.
16	Requested the City create a youth scholarship fund for under privileged kids to play sports	Montano	5/17/2022	As part of the adoption of the FY 2022-23 Budget, the City Council allocated \$20,000 for this program. Staff presented a draft Council Policy for this program on September 6, 2022 and will return with an updated Policy based on Council discussion in October 2022.
17	Request for Crossing Guards at McCandless and Montague Expressway and review wages for Crossing Guards	Montano	4/5/2022	Per the Information Memorandum issued on June 13, the City will perform school aged pedestrian counts around schools in the City including the McCandless and Montague Expressway intersection at the beginning of the 2022-23 school year and report the findings to the Transportation Subcommittee late fall.
18	Host a Town Hall at City Hall in January, February, and March for the community to share comments about the issue of the unhoused.	Tran	11/2/2021	This item was postponed by Mayor Tran due to the Omicron variant and a rise in COVID-19 cases

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
19	Establish a SPAR fund modelled after the City of Mountain View - sets asides moneys for opportunities to buy real estate	Montano	6/7/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
20	Memorial Plaque in honor of youth skateboarder that passed away	Montano	6/7/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
21	Prepare Vision Zero Action Plan	Tran	6/7/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
22	Explore the policy for locking mechanisms on shopping carts for large commercial businesses	Tran	4/19/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
23	Explore an ordinance or policy to reduce thefts and increase security in the commercial retail parking areas	Chua	4/5/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
24	Create a plan for future solar paneling at City facilities	Montano	3/1/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting; Discussed at the May 10 budget meeting and approved funding of \$25,000 in the 2022-23 budget
25	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022	Approved during Spring Quarterly City Council Workplan Items Prioritization Discussion on 5/03/2022.
26	Requested an appropriation in an amount not to exceed \$250,000 to procure a contract to address the streetlights that are pending fieldwork.	Tran	2/1/2022	At this time, staff has sufficient Council approved resources to address the remaining streetlight outages; however, will bring relevant actions for Council consideration, if needed.
27	Explore a lease for the vacant land adjacent to the Library for City use	Tran	1/18/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting;
28	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	11/16/2021	Workplan Items Prioritization Discussion; Approved at the 5/03/2022 meeting; discussed funding at the 5/10/2022 budget
29	Request for the City to make the temporary third-party food deliver fee caps permanent and add additional provisions for enforcement	Phan	11/16/2021	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting
30	Have a picture of Albert Vogel Sr. put up in the Senior Center	Montano	10/19/2021	Approved to move forward at the 1/11/2022 Council meeting; Staff engaged the artist of the existing mural regarding this Council approved item.
31	Requested the City extend the outdoor dining options through March of next year	Phan	9/21/2021	Planning Director to provide information on current outdoor dining extension
32	Partner with the Rotary Club of Silicon Andhra to promote the stem cell donor outreach with a webinar and campaign to help increase the number of donors	Chua	8/17/2021	Staff will include the stem cell donor information in regularly scheduled wellness event
33	Include a bust of Maria Lemire on the Mural in front of the Senior Center	Montano	8/17/2021	Approved to move forward at the 1/11/2022 Council meeting; Staff engaged the artist of the existing mural regarding this Council approved item.
34	Look into opening up the Senior Center on Saturdays for half a day	Chua	8/5/2021	This three-month pilot was kicked off on Saturday Sept. 10.
35	Look into bringing back a roller rink	Montano	8/5/2021	Approved to move forward at the 1/11/2022 Council meeting. Funding for the program will need to be prioritized through the FY 22-23 budget process; Discussed at 5/10/2022 budget meeting and approved \$100,000 funding for a two-day event in 2023

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
36	Staff to create a plan on how to increase the number of local businesses doing business with the City	Chua	4/6/2021	At 8/9/2021 Council meeting, Council voted that this item may have to come back for additional discussion because there may be some legal considerations.
37	Staff to provide information on a landmark policy for the City of Milpitas	Tran	3/16/2021	8/09/2021 Council voted 5-0 to move this item forward; this item will be included for funding consideration in the development of the FY 2023-27 CIP for assessment of historical and cultural resources and development of landmark policy; The funding for the assessment of historical and cultural resources and development of a landmark policy will be included in the 2023-2027 Capital Improvement Program scheduled for adoption on May 3, 2022. This project will be scheduled to begin in FY 2022-23.
38	Amendment to the existing ordinance for third-party food delivery vendor services to prohibit regulatory response fees	Phan	2/16/2021	Agendized for discussion on 3/16/2021, deferred to 4/06/2021; CC direction for City Attorney to prepare a report; At the 11/12/2021 Transportation Subcommittee,
39	Requested that staff study the placement of a City sign for the Milpitas Police Department and explore the cost of a new sign	Dominguez	1/18/2021	and landscaping around the Police Department and Public Works Building. Lit-up signs mounted on the building are scheduled to be installed by the end of December 2022
40	Ordinance to ban vaping in the City	Montano	12/15/2020	areas adopted by Council on 6/15/2021. Council received a follow-up presentation
41	Review City policy on speed bumps	Tran	12/15/2020	Subcommittee on 02/12/2021;voted on 3/16/2021 to revisit this item; On April 8, 2022
42	Consider Community Museum and Park on Main St.	Phan	8/20/2019	to Rules Subcommittee 8/23/2019. Moved to Specific Plan Community Conversation events.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
	Requested the City Attorney's office explore encampment ordinances from the City of Oakland, Los Angeles, or other regional cities and would like a discussion on the existing policies to be brought back before the July recess.	Tran	2/15/2022	4/19/2022 direct the City Attorney to make the recommended changes to the Municipal Code to remove and prohibit property in public. The first reading of the ordinance was approved at the Sept. 6, 2022 City Council meeting.
	Local Boy Scouts Fee Waiver for Eagle Scout Ceremony	Tran	6/7/2022	Through the sponsorship of the Milpitas Rotary Club the Boy Scouts received the resident rental rates; however, the Rotary Club did not sponsor the Boy Scouts for a fee waiver request.
	City Staff apply for the "Better Cities for Pets" Certification	Tran	6/21/2022	This item did not move forward as part of the next City Council additional workplan items prioritization in August/September
	Explore the use of roundabouts as a traffic calming mechanism	Dominguez	4/19/2022	This item did not move forward as part of the next City Council additional workplan items prioritization in August/September
	Consider policies to regulate automated equipment that would replace a position typically filled by an employee.	Phan	4/19/2022	This item did not move forward as part of the next City Council additional workplan items prioritization in August/September
	City to highlight mental health resources on the website	Dominguez	8/17/2021	Staff issued an Information Memorandum on August 1, 2022
	Look into allowing outdoor music and would like the ordinance brought back to Council.	Montano	8/5/2021	Approved to move forward at the 1/11/2022 Council meeting; scheduled for 8/9/22 City Council Meeting
	Requested that the City have mini-libraries in the low-income areas of the City.	Montano	4/20/2021	8/09/2021 Council voted 3-1-1 to move this item forward, staff to follow up with Vice Mayor Montano on specific vision. Staff met with the Vice Mayor. The City will continue to facilitate libraries as needed but will not take a lead role in funding or operating them.
	Consider change in term limits for Mayor + Councilmembers	Montano	6/16/2020	8/4/2020: Voted 3 -2 to pursue; 2/02/2021 to agendize for a future meeting; 3/16/2021 voted 3-1-1 to move forward. Scheduled for 3/15/2022; rescheduled for 4/05/2022; 4/05/2022 could gave direction to move forward with Councilmember term limits and discuss the Mayoral seat at a later date; Discussed at the 5/10/2022 budget meeting and had a consensus not want to move forward with a ballot measure for the Mayor term limit; Councilmember term limits scheduled for June 7; Scheduled for June 21 meeting; Ballot Measure to appear on November 8, 2022 General Municipal Election
	Prepare a report on ghost guns; engage in legislative advocacy regarding ghost guns; and incentivize ghost gun buybacks at the May buyback event	Dominguez; Tran	4/5/2022	Staff issued an Information Memorandum on August 12, 2022. At the gun buyback event held on May 22, 2022, ghost guns were bought back for \$200 vs. handguns and rifles for \$100.

NOTE: Deferred and Completed Items are not listed

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

	Staff provide and explain the Project Homekey Management Manual, see if the MOU is being followed including forming an oversight committee, and explore with County to have check-ins of the units. Dominguez indicated it could be included in Council Member Chua's recommendation. Mayor requested to include County in discussion.	Dominguez	6/7/2022	Item will be agendized for the August 16 City Council meeting including the crime data related to the Homekey Project
	Waive fees for family fundraiser at Milpitas Skate Park	Dominguez	6/14/2022	Staff facilitated the renting of requested City facilities; however, the applicant was not eligible for receiving a fee waiver.
	Agendize a Flag Raising for India Independence Day	Tran	6/14/2022	Item added to 6/21/22 Consent Calendar
	Letter from City Council opposing AB 2181 (Berman) regarding VTA's Board Composition	Tran	6/7/2022	Per the email sent to Council on 6/17/2022, consistent with the Council approved Legislative Advocacy Policy, Mayor Tran signed a letter opposing the legislation unless amended.
	Explore increasing the Conferences/Meetings/Memberships allowance for each Councilmember to \$10,000	Chua	5/17/2022	On 6/07/22, City Council did not approve increasing the allowance as part of the adoption of the FY 2022-23 Budget; however, Council provided direction to review funding need as part of the FY 2022-23 mid-year budget review.
	Science, Technology, and Innovation Commission agendize and explore a comprehensive internet connectivity plan.	Tran	5/3/2022	Item will be agendized for discussion at June STI Commission meeting
	Consider funding to implement and create a homelessness encampment response team to be dispatched to encampment sites to address concerns, talked about creating a position to provide mental health assistance, and would like this to be brought back for discussion at the budget meeting	Dominguez	3/15/2022	Direction from Council to bring forward as part of FY 22-23 budget discussion; at the May 10 Budget Study Session Council did not direct to do any further work on this item.
	Consider expanding the Fee Waiver Policy eligibility to non-profit organizations outside of Milpitas but the events are specific to Milpitas residents	Chua	3/15/2022	Council approved the policy revision at the June 21, 2022 City Council meeting
	Designate the California Oak Tree as the City's official heritage tree	Montano	2/1/2022	Council approved at the 6/7/2022 meeting.
	Host a Town Hall at City Hall in January, February, and March for the community to share comments about the issue of the unhoused.	Tran	11/2/2021	This item was postponed by Mayor Tran due to the Omicron variant and a rise in COVID-19 cases
	Bring back a conversation in the budget meeting to fund "walking beats" in the commercial and high crime areas	Dominguez	4/5/2022	At the 4/5/2022 City Council meeting, this item was discussed and there was direction from Councilmember Dominguez to work with the City Manager to find funding sources

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

	Fee waiver for the Filipino American South Bay Community to hold pop-up resource fair at a City Park	Dominguez	3/1/2022	Staff engaged organizers of the event; event was held on June 19; organizers did not request a fee waiver
	Agendize an update to the Lobbyist Ordinance for the next meeting	Chua	3/1/2022	Discussed at 3/15 City Council Meeting; At the 3/15/2022 Council Meeting, City Attorney was directed to bring back a proposed ordinance amendment for further discussion; Council approved the ordinance on 6/7/2022
	Requested an agenda item on November 2 Council meeting allowing the Council to rescind direction given to 1355 California Circle and include direction to allow the project application to move forward without being tied to a specific plan	Chua	10/19/2021	At the 1/18/2022 council meeting, Council voted 4-1 to rescind the direction and direct staff and the application to explore option one in the presentation to amend the General Plan and remove Council policy for the preparation of a Specific Plan
	Requested staff work with the Vice Mayor and Mayor to explore and discuss building height limits near the hillside by January 2022	Tran	9/21/2021	Approved to move forward at the 1/11/2022 Council meeting; I scheduled for 6/21/2022
	Work with the school district to have a contest to create art murals for the pillars on Main Street	Montano	9/7/2021	Approved to move forward at the 1/11/2022 Council meeting; funding allocated to Great Mall Pkwy. VTA pillar murals
	Look into how the City can be a resource for small businesses to help guide them on what to do in terms of ADA (Americans with Disabilities Act) requirements due to the quick changes made to facilities during the pandemic	Chua	8/5/2021	SVEDA/SV Joint Venture hosted the "SV Small Businesses & ADA Compliance" webinar on 11/3/21. Several Milpitas business reps, & staff from Econ. Dev. & Building participated. Staff met with reps from CA Comm. on Disability Access to discuss business education & outreach.
	Discussion in the next fiscal year, to have a sliding scale permitting program for seniors and low-income residence for necessary safety renovations	Tran	5/4/2021	8/09/2021 Council voted 5-0 to move this item forward and modify the existing Milpitas Assistance program to include seniors; Staff will bring this item for funding consideration as part of the FY 2022-23 budget process
	Discussion to reduce the City's Senior Center facilities deposit	Montano	5/4/2021	8/09/2021 Council voted 5-0 to refer this item as part of the development of the FY 2022-23 Master Fee Schedule; Council approved the item on 4/19/22 as part of the Master Fee Schedule
	Staff to look into creating a rose garden with a children's memorial site	Montano	4/6/2021	8/09/2021 Council voted 4-1 to discuss details with Vice Mayor Montano and refer this item as part of the development of the 2023-2027 CIP; The funding for this project will be included in the 2023-2027 Capital Improvement Program scheduled for adoption on May 3, 2022. Discussed at the May 3 meeting funding was reallocated to the Softball Field project

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

	Staff to look into creating "Welcome to Milpitas" signs in key areas of in the City	Montano	4/6/2021	8/09/2021 Council voted 5-0 to move this item forward and Council provided direction that the signs should align with the efforts currently underway with the Metro Plan and Main Street Gateway Specific Plan process and work with private development. Staff was directed to work with Vice Mayor on additional clarification. In November, Vice Mayor Montano noted a preference for a location on South Main Street. This project will be added to unfunded project list of the 2023-2027 CIP to allow time for staff to research potential grant funding and outreach to local business and service clubs.
	Staff to provide information to place a measure on the ballot to change the directly elected Mayor to a rotational at-large position	Tran	3/16/2021	To be brought forward in Spring of 2022, once new City Attorney is in place; scheduled for 3/15/2022; rescheduled for 4/05/2022; discussed at the May 10 budget meeting and had a consensus that they did not want to move forward with a Mayoral ballot measure



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Reconfirm Findings and Determinations Under Resolution No. 9165 and Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/4/2022
	<u>Recommendation:</u> Move to reconfirm findings and determinations under Resolution No. 9165 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

Background:

On March 17, 2020, in the face of the COVID-19 pandemic, Governor Gavin Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means.

The provisions in the Brown Act that were suspended by the Governor's Executive Order are contained at Government Code Section 54953(b)(3) and require that when teleconferencing is used, outside of a statewide emergency, that the following occur:

- An agenda is required to be posted at all locations, including any teleconference locations
- Each teleconference location must be identified on the actual agenda
- Each teleconference location shall be accessible to the public
- A quorum of the legislative body must be in the jurisdiction

With the Governor's Executive Order, the four above requirements were suspended, allowing Councilmembers to not have to post an agenda at their teleconference location, not have to identify their location on the meeting agenda, not have to ensure public accessibility at the teleconference location, and the legislative body did not need a quorum present in the jurisdiction. As the Council is well aware, this allowed all City Council meetings and other meetings of legislative bodies of the City to be conducted by Zoom with councilmembers, commission members, committee members, and staff all joining from remote virtual locations.

The suspension of certain provisions of the Brown Act was further extended by the Governor on June 11, 2021 by the issuance of Executive Order N-08-21 which continued to allow for complete virtual meetings until September 30, 2021.

With the expiration of the Governor's Executive Order and the uncertainty that surrounded the Governor's potential recall, the State Legislature also took the remote meeting issue into its own hands through the adoption of Assembly Bill 361, which is explained in more depth in the Analysis section below.

On May 17, 2022, the City Council adopted Resolution No. 9156, making findings that there is an existing State of Emergency and that state or local officials continue to recommend social distancing measures to prevent the spread of COVID-19. In particular, the resolution included reference to Cal-OSHA regulation 3205, which recommends physical distancing in the workplace. By motion and majority vote, the City Council may reconfirm the findings of Resolution No. 9156 and continue to hold virtual meetings pursuant to AB 361.

Analysis:

On September 16, 2021, the Governor signed AB 361, which allows legislative bodies to meet virtually provided there is a state of emergency declared by the Governor, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees. The Governor by executive order signed on September 20, 2021, suspended the effective date of AB 361 to October 1, 2021. As a result, if the City desires to have virtual meetings on or after October 1, 2021, it must do so consistent with the requirements of AB 361.

AB 361 preserves many of the provisions of the earlier executive orders, including the suspension of the four teleconferencing requirements noted above, while also adding new requirements to the management of remote and teleconference public meetings in order to better achieve the levels of transparency that the Brown Act demands. Specifically, AB 361 imposes two new rules on remote public meetings:

1. Local governments and agencies hosting teleconference meetings in lieu of traditional in-person public meetings must permit direct public comment during the teleconference and must leave open the opportunity for public comment until the comment period for a given item is closed during the ordinary course of the meeting. The opportunity to make public comment must be of a sufficient duration so as to allow actual public participation.
2. Any action by the governing body during a public teleconference meeting must occur while the agency is actively and successfully broadcasting to members of the public through a call-in option or an internet-based service option. If a technical disruption within the agency's control prevents members of the public from either viewing the meeting of the public agency or prevents members of the public from offering public comment, the agency must cease all action on the meeting agenda until the disruption ends and the broadcast is restored. Action taken during an agency-caused disruption may be challenged as a violation of the Brown Act.

In order to continue to qualify for AB 361's waiver of in-person meeting requirements, the City Council must, within thirty (30) days of its first meeting under AB 361, and every thirty (30) days thereafter, make findings that (a) state or local officials continue to recommend measures to promote social distancing, or that (b) an in-person meeting would constitute an imminent risk to the safety of attendees.

The above conditions continue to exist at this time, and staff recommends that the City Council by motion reconfirm the findings made in Resolution No. 9156 so that the City Council and all other subordinate legislative bodies may continue to meet virtually.

Lastly, it is important to note that AB 361 is optional. If the City Council wishes, it may meet in person. In addition, hybrid meetings are permissible.

Policy Alternatives:

Alternative 1: Do not by motion reconfirm the findings made in the resolution making findings and determinations under Assembly Bill 361 for the continuation of virtual meetings.

Pros: None

Cons: Many of the existing Commission, Committee, and Task Force meetings will not be able to meet virtually or through a hybrid format forcing all staff, commission or committee members, and the public to attend meetings in person.

Reason not recommended: The COVID-19 pandemic continues to be a global health issue and by forcing commission, committee, and task force meetings to be in person, public health may be put at risk.

Fiscal Impact:

The City Council's reconfirmation of the findings made in the resolution to continue with virtual meetings will maintain the status quo and no financial impact is anticipated by the reconfirmation of the findings.

California Environmental Quality Act:

The City Council's reconfirmation of the findings made in the resolution is not a project under the California Environmental Quality Act (CEQA) Guideline 15378(b)(5) as it constitutes an organizational or administrative activity of the government that will not result in direct or indirect physical changes in the environment. Further, virtual meetings are likely to reduce certain impacts associated with vehicular travel related to in-person public meetings.

Recommendation:

Move to reconfirm findings and determinations under Resolution No. 9105 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

Attachment

1. Resolution 9165

RESOLUTION 9165

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING FINDINGS AND DETERMINATIONS UNDER AB 361 FOR THE CONTINUATION OF VIRTUAL MEETINGS

WHEREAS, the Ralph M. Brown Act (Gov. Code § 54950 *et seq.*) generally requires local agencies meeting via teleconference, including through other virtual or electronic means, to, among other things, provide public access at each location in which members of the legislative body are teleconferencing; and

WHEREAS, the Legislature recently enacted Assembly Bill 361 (AB 361), which amended Government Code section 54953 to allow local agencies to meet fully virtually, without fully adhering to the rules otherwise applicable to teleconferencing, during a proclaimed state of emergency if state or local officials have imposed or recommended measures to promote social distancing; and

WHEREAS, the Governor issued a proclamation declaring a state of emergency on March 4, 2020 due to the COVID-19 pandemic, pursuant to section 8625 of the California Emergency Services Act, and this proclaimed state of emergency currently remains in effect; and

WHEREAS, the City Council of the City of Milpitas has considered the circumstances of the state of emergency; and

WHEREAS, state or local officials continue to recommend measures to promote social distancing to prevent the spread of COVID-19, in particular, Cal-OSHA regulation 3205 recommends physical distancing in the workplace generally and regulates a “close contact” defined as being within 6 feet of another under certain circumstances; and

WHEREAS, in order to continue to impose social distancing while holding in-person meetings there is a high likelihood that members of the public would not all be able to be present in the meetings spaces; and

WHEREAS, the continuation of virtual meetings will allow for full participation by members of the public until social distancing recommendations are no longer necessary; and

WHEREAS, the City Council of the City of Milpitas desires that all City legislative bodies continue to hold virtual meetings pursuant to AB 361 and Government Code section 54953(e).

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 and all other legislative bodies of the City of Milpitas who are required to hold public meetings, shall continue to meet virtually in accordance with Government Code section 54953(e) and without compliance with section 54953(b)(3) based upon the findings and determinations hereby made by the City Council.

PASSED AND ADOPTED this 7th day of June 2022, by the following vote:

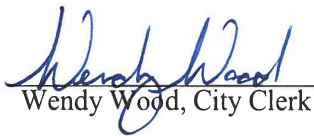
AYES: (5) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan

NOES: (0) None

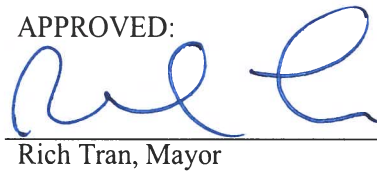
ABSENT: (0) None

ABSTAIN: (0) None

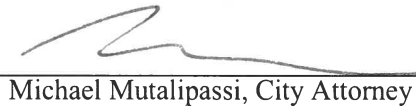
ATTEST:


Wendy Wood, City Clerk

APPROVED:


Rich Tran, Mayor

APPROVED AS TO FORM:


Michael Mutalipassi, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider the Recommendation from Mayor Tran for Appointment to City Commissions (Contact: Mayor Tran, 408- 586-3029)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/4/2022
	<u>Recommendation:</u> Receive the recommendation from Mayor Tran and approve appointments to City Commissions.

Background:

The City of Milpitas has 13 Commissions (including the Measure F Oversight Committee), with members appointed by the Mayor and confirmed by the City Council. The Commissions advise the Milpitas elected officials on a variety of community interest and policy areas.

Any resident interested in serving on a City Commission must complete a Commission Application and submit the form to the City Clerk. Copies of the applications are provided to the Mayor for his consideration. Per Government Code 40605, in a general law city where the office of Mayor is an elective office, the Mayor with the approval of the City Council, shall make all appointments to boards, commissions, and committees unless otherwise specifically provided by statute.

Current Commissioners may seek to be reappointed upon the expiration of their current term, but reappointment to a new term is not automatic. Those Commissioners seeking reappointment must contact the City Clerk and the Mayor to convey their request. Re-appointment must be recommended by the Mayor and confirmed by the City Council.

Analysis:

Mayor Tran is making the following recommendations for appointment:

Energy and Environmental Sustainability Commission:

1. Revise appointment of Carmelo Coronel to Alternate # 2 with an unexpired term ending October 2024.

Arts Commission:

1. Reappoint Joyita Ghose to a term ending October 2025.
2. Promote Jamie Hekkelman from Alternate No. 1 to the vacant seat with an unexpired term ending October 2024.
3. Appoint Mona Sampath Khan as Alternate No. 1 with a term ending October 2025.
4. Appoint Kenneth Truong to the Calaveras Hills High School Student seat with an unexpired term ending October 2023.

All recommended Commissioner appointments have been reviewed and confirmed by the City Clerk's office.

Fiscal Impact:

There is no fiscal impact associated with this item.

Recommendation:

Receive the recommendation from Mayor Tran and approve appointments to City Commissions.

Attachments:

1. Applications for Energy and Environmental Sustainability Commission
2. Applications for Arts Commission

COMMISSION/COMMITTEE APPLYING FOR: Energy and Environmental Sustainability Commission

Name CARMELO ESPIRITU CORONEL

Address Type Residence

Address

City MILPITAS

Postal/Zip Code 95035

Mobile Number

E-Mail Address

City Clerk's Office
JUL 28 2022
RECEIVED

Present Employer Mountain's Edge General Contractors, Inc.

Other Phone

Occupation President

List community organizations to which you belong or have belonged (additional information may be attached).

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I am a dedicated and self-motivated professional with over 15 years experience in construction project management. I am proficient in building relationship with clients and across organizations and teams. Experienced at managing projects from start to completion. Possess strong written and verbal communication skills. Please see attached comprehensive resume.

Upload a File [Carmelo Coronel - City of Milpitas.pdf](#)

Date Jul 27, 2022

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Carmela E. Coronel

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

CITY OF MILPITAS COMMISSION REAPPOINTMENT APPLICATION

Item # C6.

COMMISSION REQUESTING REAPPOINTMENT FOR ↑

Joyita

Ghose

Name:

First

Last

Currently serving as : ☒ Commissioner ☐ Alternate

Years of service: 2

I am requesting reappointment for an additional term.

If Youth Advisory Commission applicant, indicate your grade & school: _____

I have sufficient time to devote to this responsibility and will attend the required meetings if I am reappointed.



Signature

08/24/2022

Date

Reappointments to Commissions are made by the Mayor with the concurrence of the City Council.

PLEASE BE AWARE THAT ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD
E-mail, send in US mail or drop off your completed reappointment request:

City Clerk, Milpitas City Hall 3rd floor, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: CityClerk@ci.milpitas.ca.gov

COMMISSION/COMMITTEE APPLYING FOR: Arts Commission
Name Mona Sampath Khan
Address Type Residence
Address
City Milpitas
Postal/Zip Code 95035
Mobile Number
E-Mail Address

Item # C6.

City Clerk's Office

APR 05 2022

RECEIVED

Present Employer Mona Khan Company
Business Address (Optional) 473 Jacklin Road
City Milpitas
Postal / Zip code 95035

Occupation Artistic Director
College, Professional, Vocational, or other schools attended MBA and Bachelor's of Commerce
Major Subject Business Management
Degree MBA

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization India Community Center

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

Hi there, I have actively been in the performing arts scene in the bay area since 2003. I worked at the India community center from 2003 to 2006 and pioneered their Bollywood dance and fitness program. I then started my first dance company in the bay area in 2006 and then founded the Mona Khan Company (MKC) in the year 2009. Pre pandemic, MKC operated out of 14 locations in the bay area serving thousands of students each quarter. I also founded "Bombay Jam" which is a Bollywood dance fitness program that is now a globally recognized program. Over the years, I have also been on the board of Jeena, Inc. A support group for parents with children with developmental disorders. I am also very passionate about the seniors in our community. Every week we volunteer our time and teach a Bollywood dance class for seniors.

Building a more diverse and rich performing arts culture in the Milpitas areas is something that I am really excited about. Our flagship location is in Milpitas and we continue to bring in students and patrons from all over the bay to our Milpitas studio. In the coming years, it would be really fantastic, if we can attract more artists to the Milpitas area by providing them more opportunities and infrastructure. Milpitas is such a great hub and we personally have experienced this with our flagship location. It would be such an honor to be part of making this happen via the arts commission and helping in any other way I can to a city that has given me/us so much.

Thank you,
Mona

Date Apr 04, 2022

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy.

I hereby certify that all statements contained in this application are true.

Item # C6.

Arts Commission

33



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Waive the Second Reading and Adopt Revised Ordinance No. 38.846 Amending Sections of Chapter 10, Title XI of the Milpitas Municipal Code Relating to Non-Residential Building Heights in the C2 General Commercial, HS Highway Services, and TC Town Center Zoning Districts (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)
Category:	Consent Calendar-Community Development
Meeting Date:	10/4/2022
	<u>Recommendation:</u> Move to waive the second reading and adopt Ordinance No. 38.846 amending sections of Chapter 10 of Title XI of the Milpitas Municipal Code relating to maximum building heights in certain zoning districts

Background:

This Ordinance was introduced at the City Council meeting held on September 20, 2022. The Ordinance is now ready for its second reading and adoption.

Fiscal Impact:

The proposed zoning ordinance amendments will establish a maximum height for buildings in three of the city's commercial zones: C2 General Commercial, HS Highway Services, and TC Town Center. This change in development regulations will have no fiscal impact on the City.

California Environmental Quality Act:

The proposed text amendments to the Milpitas Municipal Code are exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan) and Section 15061(b)(3) (Common Sense Exemption).

Recommendation:

Move to waive the second reading and adopt Ordinance No. 38.846 amending sections of Chapter 10 of Title XI and Chapter 100 of Title V of the Milpitas Municipal Code relating to maximum building heights in the C2, HS, and TC Zoning Districts.

Attachments:

1. Ordinance No. 38.846

PLEASE NOTE:

This copy of Ordinance No. 38.846 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 38.846

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS OF CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE TO MODIFY AND ADD REGULATIONS RELATING TO MAXIMUM HEIGHTS FOR NON-RESIDENTIAL BUILDINGS IN CERTAIN COMMERCIAL ZONES, AND MAKING FINDINGS OF CEQA EXEMPTION

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:

APPROVED:

Wendy Wood, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, clear and specific zoning regulations, including development standards and findings for project approval, are important elements in a municipal government’s process of encouraging and approving high-quality development projects that are compatible with surrounding areas; and

WHEREAS, the City’s Zoning Ordinance, Chapter 10 of Title XI of the Milpitas Municipal Code, does not currently include standards for the maximum height of primary buildings in the General Commercial (C2), Highway Services (HS), or Town Center (TC) zoning districts; and

WHEREAS, the City wishes to enact appropriate regulations applying to the maximum height of primary buildings in the C2, HS, and TC zones, and further to conditionally allow additional building height in the C2 and TC zones, when such buildings are appropriately located and well designed to avoid negative impacts on surrounding properties and public spaces; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code, including Section 2.03 (“Definitions”), Section 5.03 (“Commercial Zone General Development Standards”), Section 5.04 (“Commercial Zone Special Development Standards”), and Section 57.04 (“Conditional Use Permits and Minor Conditional Use Permits”), of Title XI, Chapter 10–Zoning; and

WHEREAS, on June 8, 2022, the Planning Commission for the City of Milpitas held a lawfully noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and make a recommendation to the City Council on the project; and

WHEREAS, on June 14, 2022, the City Council of the City of Milpitas held a study session to consider the proposed Amendment and to provide comments and direction to Planning Department staff; and

WHEREAS, on August 9, 2022, the City Council of the City of Milpitas held a lawfully noticed public hearing to solicit public comment, take public testimony, and consider the proposed Amendment; and

WHEREAS, on August 16, 2022, the City Council postponed adoption of the proposed Amendment and directed staff to meet with member of the Milpitas Involved Citizens neighborhood group to review the proposed Amendment, answer questions, and resolve any concerns; and

WHEREAS, on September 20, 2022, the City Council of the City of Milpitas held a second lawfully noticed public hearing to solicit public comment, take public testimony, and consider a modified version of the proposed Amendment: and

WHEREAS, this ordinance is exempt from the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* (“CEQA”), each as a separate and independent basis, pursuant to CEQA Guidelines Section 15183 (projects consistent with the General Plan) and Section 15061(b)(3) (no possibility of significant environmental effect).

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. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that this ordinance is categorically exempt from the California Environmental Quality Act (“CEQA”) under CEQA Guidelines, § 15061(b)(3), also known as the “common sense exemption”, which exempts from CEQA any project where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. A “significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project. This ordinance would enact new building height regulations for non-residential development in the General Commercial (C2), Highway Services (HS), and Town Center (TC) zoning districts. Since there are currently no maximum building heights specified in the development standards for these zones, the ordinance would create and apply new standards that are more specific and robust than those that currently govern new development. In addition, new regulations are proposed that would apply in circumstances where a project applicant proposes a greater building height than the 35 feet or three stories that is allowed by right in the C2 and TC zones. These draft standards would encourage good design and improve project compatibility with surrounding areas, thereby eliminating or mitigating potential negative effects. Therefore, it can be seen with certainty that there is no possibility that this Ordinance would have a significant effect on the environment; accordingly, this Ordinance is exempt from CEQA review.

Moreover, the City Council hereby finds that the introduction and adoption of this Ordinance is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Section 15183 of the CEQA Guidelines provides that projects that are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified “shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” These proposed zoning amendments serve to implement policies and guidelines in the Community Design Element of the Milpitas General Plan because they would add development standards, design criteria, and findings for approval for non-residential buildings to ensure that any proposed building that is taller than the maximum height allowed by right is designed to fit in well with existing neighborhood context and to minimize impacts on surrounding properties. Therefore, the proposed Amendment is consistent with the General Plan. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA pursuant to Section 15183 of the CEQA Guidelines.

Accordingly, this Ordinance is exempt from CEQA review pursuant to Sections 15061(b)(3) and 15183 of the CEQA Guidelines, each as a separate and independent basis.

SECTION 3. GENERAL PLAN CONSISTENCY

The Community Design Element of the City’s General Plan includes policies and guidelines that require development projects to (1) incorporate context-sensitive design approaches, respecting and responding to the

scale and character of adjacent land uses as well as surrounding neighborhoods; and to (2) reinforce design elements of the surrounding area, such as scale and setback patterns. This zoning Amendment would set maximum by-right height for primary buildings in three commercial zoning districts, where no maximum height standards are currently stated. The proposed zoning changes provide specific and detailed guidance about how a request for additional conditionally permitted height should be evaluated and what factors should form the basis of a decision on such a request. Moreover, the Amendment includes well-crafted language for findings for approval of conditional requests for additional building height, which would serve to ensure that contextual factors (e.g. neighborhood scale and width of primary street right-of-way) and project-specific design factors (such as building setbacks and upper story building step-backs) are considered as part of development projects involving taller buildings in commercial areas. In this way, the proposed Amendment would serve to implement several policies of the General Plan.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2

Title XI, Chapter 10, Section 2 (Definitions), Subsection XI-10-2.02 (General Definitions) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-2.03 Definitions

"Floor Area Ratio (FAR)" is defined for nonresidential Zoning Districts as the maximum permitted ratio of gross floor area to site area and is calculated as follows:

$$\text{FAR} = \frac{\text{Total of Gross Floor Area for All Structures on Site}}{\text{Site Area}}$$

~~Increases above the maximum permitted FAR for any district can be allowed with approval of a Use Permit by the Planning Commission. This can be considered when the applicant can demonstrate that the proposed development will (1) generate low peak-hour traffic; (2) will not create a dominating visual prominence. Examples of such uses include wholesaling, distribution and hospitals. In each case where an increase in the maximum permitted FAR has been allowed, all other development standards for the site must be met.~~

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 5

Title XI, Chapter 10, Section 5 (Commercial Zones and Standards), Subsection XI-10-5.03 (Commercial Zone General Development Standards) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-5.03 Commercial Zone General Development Standards

The following minimum requirements shall be observed, except where increased for conditional uses. The minimum requirement shall be one of the following for the district classification as designated on the zoning map.

**Table XI-10-5.03-1
Commercial Zone Development Standards**

Standard	CO	C1	C2	HS	TC
Lot Area, minimum	None	None	10,000 s.f.	Fronting major street	None.

				(4 or more lanes): 1.5 ac. Fronting all other streets (two lanes): 20,000 s.f.	
Lot Width, minimum	None	None	100 ft.	Fronting major street: 250 ft. Fronting all other streets: 125 ft.	None
Front Yard Setback, minimum	10 ft.	20 ft.	0 ft.	Major street: 50 ft. All other streets: 0 ft.	20 ft. 35 ft. along E. Calaveras Blvd.
Side Yard Setback (Interior), minimum	10 ft.	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District
Street Side Yard Setback, minimum	10 ft.	0 ft.	0 ft.	0 ft.	20 ft. 35 ft. along E. Calaveras Blvd.
Rear Yard Setback, minimum	10 ft. When abutting residential, not less than R District required setback	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District
Building Height, maximum					
Primary building	35 ft. or 3 stories	35 ft. or 2.53 stories	None 35 ft. or 3 stories^{1,2}	None 35 feet or 3 stories²	None ¹ 35 feet or 3 stories^{1,2}
Accessory building	25 ft. or 2 stories	25 ft. or 2 stories			
Parking	Refer to Section 53, Off Street Parking, of this Chapter.				
Lot Coverage	None	None	None	None	None
Floor Area Ratio	0.50	0.35	0.50	0.50	0.85
Landscaping	None	None	None	25% of front yard setback	All required setback areas and the ends

					of each parking aisle ²³	Item # C7.
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¹ Refer to Subsections [XI-10-5.04\(D\) and XI-10-57.04\(C\)\(1\)](#), ~~Applicability~~, of this Chapter for additional requirements.

² For properties that are located within 500 feet of the boundary of a Single Family Residential (R1) or One and Two-Family Residential (R2) zone, the maximum height of a primary building shall be limited to 30 feet or 2.5 stories.

²³ The Planning Commission shall determine the size of the planters through site and architectural review.

Title XI, Chapter 10, Section 5 (Commercial Zones and Standards), Subsection XI-10-5.04 (Commercial Zone Special Development Standards) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-5.04 Commercial Zone Special Development Standards

A. All Zones.

1. Areas for Collecting and Loading Recyclable Materials. There shall be provided areas for collecting materials in accordance with Subsection 54.12, Areas for collecting and loading recyclable materials, of this Chapter.
2. All outdoor storage areas of such things as trash and materials shall be within a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum six (6) feet in height and shall not be located within any front or street side yard setback area.
3. Such uses, operations or products shall not be objectionable due to odor, dust, smoke, noise, vibration or other similar causes.

B. TC Zone.

1. Setbacks for Residential Projects. Except for the Calaveras Boulevard setback, all other setbacks shall be determined through a Site Development Permit.

C. Neighborhood Commercial (C1) Zone. Thrift stores shall comply with each of the following standards:

1. Signage prohibiting dumping of merchandise during non-business hours shall be installed in conspicuous locations to the satisfaction of the Planning Director indicating penalties and fines for such activity. Signage shall include daytime collection hours for donated goods.
2. A designated area inside the building shall be established for the receipt, sorting and processing of goods. Donated goods shall be accepted only inside the building and during regular business hours; no donated goods shall be left outside. Loading and unloading must take place in a designated area that shall be cleared, cleaned and maintained before closing of business each day.
3. The storefront windows shall be permanently maintained as displays of merchandise in a professional and attractive manner (i.e., unsightly clothing racks and displays shall not be placed adjacent to the windows).
4. Any goods or materials left outside of the store overnight shall be removed immediately upon the thrift store opening the next business day.
5. Outdoor storage or display of donated goods or merchandise shall not be permitted.
6. The subject property shall be maintained free of trash, debris, any all other goods at all times.
7. Thrift stores shall not be located closer than one thousand (1000) feet from another thrift store.

1. In deciding whether to grant a request for additional building height through the Conditional Use Permit process pursuant to Section XI-10-57.04(C)(1), the Planning Commission shall consider site conditions, design elements, and other factors including but not limited to (a) width of right-of-way of principal street; (b) proximity of the site to low- or medium-density residential districts (R1, R2, and R3); (c) building setbacks in relation to proposed building height in excess of 35 feet; and (d) upper story step-backs.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 57

Title XI, Chapter 10, Section 57 (Applications), Subsection XI-57.04 (Conditional Use Permits and Minor Conditional Use Permits) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-57.04 Conditional Use Permits and Minor Conditional Use Permits

A. Purpose and Intent.

1. The purpose and intent of the Conditional Use Permit process is to provide a review of land uses which would not otherwise be permitted as a matter of right in a zoning district because of their nature, have an impact on the surrounding environment and for the determination of whether or not the proposed use is appropriate for its proposed location.

The Conditional Use Permit process is intended to encourage uses to be located in a manner that is:

- a. Consistent with the City's zones;
 - b. Sensitive to community and neighborhood identity; and
 - c. Minimizes impacts to adjacent uses, including traffic flow; circulation; safety for vehicular and pedestrian traffic; imposition of noises, odors and health and safety hazards upon nearby residential area; provision of adequate light, air and reasonable access; securing safety from fire and other dangers; prevent overcrowding of land; facilitating adequate provision for transportation and in general, to promote the public health, safety, peace, morals, comfort and welfare; prevention of neighborhood deterioration and blight; the objectives of zoning and planning in the community and the effect upon the City's general welfare of this proposed use in relation to surrounding uses and the community. Review of a use may require the consideration of site plan issues related to the use, as well.
2. It is the purpose of the Minor Conditional Use Permit process to provide for the streamlined review of uses that may have an impact on the surrounding environment and require discretionary review, but due to their nature, scale or location, do not require discretionary consideration by the full Planning Commission. Either the Zoning Administrator or Planning staff has the authority to review Minor Conditional Use Permits. The Minor Conditional Use Permit process has as its purpose the same goals for uses described for the Conditional Use Permit process above.

B. Authority.

1. Conditional Use Permits. The Planning Commission has the authority to approve Conditional Use Permits, subject to concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter.
2. Minor Conditional Use Permits. Minor Conditional Use Permits may be approved either by the Zoning Administrator or administratively by Planning staff.

- a. Review by the Zoning Administrator. The Zoning Administrator has the authority to review Minor Conditional Use Permits for those uses listed in the use tables of the Zoning Ordinance. Such approvals shall be subject to the concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter.
- b. Review by Planning staff. Planning staff has the authority to administratively approve Minor Conditional Use Permits for those uses listed in the use tables of the Zoning Ordinance. Such approvals shall be subject to concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter. Planning staff-level issued Minor Conditional Use Permits shall not require a public hearing or notice.

C. Applicability.

1. Conditional Use Permits. Conditional Use Permits are required as indicated by the use tables in Residential, Mixed Use, Commercial, Industrial, Institutional, Park and Open Space, and other land use districts of this Chapter. Conditional Use Permits are also required for the following requests:

Table XI-10-57.04-1

Use/Modifications	As provided for in:	Notes
Height		
Height. For buildings that exceed three stories or 35 feet, <u>up to a maximum of six stories or 75 feet</u> , within the MP, C2, and TC districts.	Table XI-10-7.03-1, Industrial Zone Development Standards and Table XI-10-5.03-1 Commercial Zone Development Standards	See Table XI-10-57.04-2 and Section XI-10-5.04(D)(1) See footnote 1
Height. For buildings that exceed six stories or 85 feet within the -OO overlay district up to a maximum of eight stories or 115 feet in height.	Section XI-10-12.02, Gateway Office (-OO) Overlay District	
Height. Permit in R2 and R3 districts, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six stories or 75 feet, provided, that the front and side yard requirements for such buildings in the "R3" District are complied with.		
Non-conforming		
Nonconforming buildings and structures	Section XI-10-56.02(C), Additions to, enlargements and moving of nonconforming buildings and structures	See footnote 12
Nonconforming uses, change of use	Section XI-10-56.03, Nonconforming use of buildings and structures	
Parking		
Parking location	Section XI-10-53.13(A), Location of Parking	
Tandem parking	Section XI-10-53.07(D), Tandem Parking Spaces and Section XI-10-53.13(B), Parking Space Size	

Parking Structures	Section XI-10-53(H)(4), Parking Structures	Item # C7.
Temporary Uses and Structures		
Temporary buildings and structures	Section XI-10-13.11(H), Temporary Uses and Structures.	
Other		
Certain industrial uses within commercial districts	Table XI-10-5.02-1, Commercial Zone Uses.	
Exceptions to performance standards	See the zoning districts use standards in XI-10-05, Residential Zones, XI-10-06, Mixed Use Zones, and XI-10-07, Industrial Zones.	
Lot width reduction		
Wireless telecommunications facilities	Section XI-10-13.09, Wireless Telecommunications Facilities, of this Chapter, for specific standards and exempted facilities.	

¹ [Properties that are located within 500 feet of the boundary of a Single Family Residential \(R1\) or One and Two-Family Residential \(R2\) zone shall not be eligible for a request for a Conditional Use Permit to allow height exceeding the maximum standard for primary buildings as shown in Table XI-10-5.03-1 – Commercial Zone Development Standards.](#)

⁴² In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 (September 17, 2002) shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this Subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

- a. Other Uses. The Planning Commission may, after a public hearing, permit the following uses in districts from which they are prohibited by this Chapter where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the General Plan.

However, any of the following uses which are marked with an asterisk shall not be allowed in the designated Hillside Combining District.

- i. Helicopter pads for medical evacuation purposes.
 - ii. Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
 - iii. Library or museum, public.
 - iv. Park, playground, or recreational or community center.
 - v. Public utility and public service use or structure.
 - vi. Radio or television transmitter.
 - vii. Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
2. Minor Conditional Use Permits. Minor Conditional Use Permits are required as indicated by the use tables in Residential, Mixed Use, Commercial, Industrial, Institutional, Park and Open Space, and other land use districts of this Chapter.

D. Submittal Requirements. Refer to the most recent submittal requirements required by the Planning Division.

E. Review Procedures.

1. Conditional Use Permits.

- a. The Planning Commission shall hold a public hearing on said application upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.
- b. After the conclusion of the hearing, the Planning Commission may approve the application, approve it subject to such conditions as the Planning Commission may impose, or disapprove the application.
 - i. The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.

2. Minor Conditional Use Permits.

- a. Review by Planning Commission Subcommittee. The Planning Commission Subcommittee shall consider a Minor Conditional Use Permit application when authorized to do so under the use tables of the Zoning Ordinance and hold a public hearing on application upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.
 - i. After the conclusion of the hearing, the Planning Commission Subcommittee may approve the application, approve it subject to such conditions as the Planning Commission Subcommittee may impose, or disapprove the application.
 - a) The Planning Commission Subcommittee may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.
 - b) If the Planning Commission Subcommittee members disagree on a decision for a project, then the project will be placed on the agenda for Planning Commission review, with no additional fees required.
- b. Review by Planning staff. The Planning Division shall administratively consider a Minor Conditional Use Permit when authorized to do so under the use tables of the Zoning Ordinance. Planning staff shall investigate as necessary to determine whether or not the proposed project conforms or may be conditioned to conform fully to the intent of this Chapter. No public hearing or notice shall be required for an administrative level Minor Conditional Use Permit.

If the project does not comply, a notice of correction shall be prepared and returned to the applicant. If the applicant resubmits for review and the project still does not comply with the required regulations or is not in accordance with the approved conditions of approval, the Planning Division shall deny the application.

F. Required Findings for Conditional Use Permits and Minor Conditional Use Permits.

- 1. General Findings. Approval may be granted by the appropriate decision-making body, of a Conditional Use Permit or Minor Conditional Use Permit application in accordance with this Chapter if all of the following findings are made, based on the evidence in the public record:
 - a. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare;
 - b. The proposed use is consistent with the Milpitas General Plan; and
 - c. The proposed use is consistent with the Milpitas Zoning Ordinance.

In the case of a project located within a Specific Plan, the following additional finding shall be made:

d. The proposed use is consistent with the Specific Plan.

2. Specific Findings. In addition to the general findings required in Subsection (F)(1), above, specific findings shall be made prior to the approval of an application for a Conditional Use Permit for the following requests:

Table XI-10-57.04-2

Use/Modification	Specific Findings
Height	
Height. For buildings that exceed three (3) stories or thirty-five (35) feet within the MP, <u>C2</u> , and TC districts.	The project exhibits exceptional architecture and aesthetic merit to warrant the excess height. <u>1. The design, location, size, and bulk of the proposed building is compatible with the existing and allowed future land uses in the vicinity.</u> <u>2. The building's design provides an appropriate transition in scale to structures in adjacent residential districts.</u> <u>3. The building's design minimizes shadows on public sidewalks, public open spaces, and solar facilities on adjacent parcels through step-backs at upper levels or other design elements.</u> <u>4. The building will not create a dominating visual prominence that is incongruent with the scale and character of the neighborhood.</u> <u>5. The building meets all other development standards for the site where it is located.</u>
Height. For buildings that exceed six (6) stories or eight-five (85) feet within the -OO overlay district up to a maximum of eight (8) stories or one hundred fifteen (115) feet in height.	The project exhibits exceptional architecture and aesthetic merit to warrant the excess height.
Other	
Certain Industrial Uses within Commercial Districts	The site is within close proximity to industrial uses or districts and is suitable for the type and intensity of use that is proposed.

- G. Consideration of Conditional Use Permit or Minor Conditional Use Permit Pending Zoning Amendment. Upon the close of a public hearing before the Planning Commission on the question of a Zoning Amendment to change property from one zone to another, and upon favorable report thereon by the Commission, the Commission may consider such matters and regulations as are set forth in Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.

The Commission may conditionally impose such requirements and regulations upon the subject property and use as the Commission is authorized to impose by Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, and may conditionally approve Conditional Use Permits; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning and shall not take effect unless and until said property is rezoned in accordance with specific

recommendation of the Planning Commission and until the Ordinance amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect.

- H. Appeals. An appeal of the action on a Conditional Use Permit or Minor Conditional Use Permit shall be reviewed in accordance with Section XI-10-64, Development Review Process, of this Chapter.
- I. Modifications Requested by the Applicant. Projects shall be developed in conformity with project approvals. If the applicant wishes to modify the project, as approved, the applicant shall submit revised plans and any other applicable information to the City for review by the Planning Division. The Planning Division staff shall make one of the following determinations regarding the request:
 - 1. Insignificant Modifications. If the Planning Division determines that the modifications are minor, the modifications may be approved administratively.
 - 2. Significant Modifications With or Without Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review and have the potential for public impact or concern, then the modifications shall be referred to the final decision-making authority for the original project in the case of non-staff level issued permits, or to the Planning Commission in the case of staff-level issued Minor Conditional Use Permits. If the original application for a project required a public hearing, then the final decision-making authority's review of modifications shall require a public hearing, in accordance with Section XI-10-64, Development Review Process, of this Chapter.
- J. Modifications, Suspensions and/or Revocations Initiated by the City. Refer to Section XI-10-63.06, Revocation, Suspension, Modification, of this Chapter.
- K. Approval Runs with the Land. The approval of a Conditional Use Permit or Minor Conditional Use Permit shall run with the land, and shall continue to be valid upon a change of ownership of the site to which it applies, unless the decision-making authority places limits on the effective time of the approval.

SECTION 7. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part has no effect on the validity of the remainder.

SECTION 8. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Report on Bids and Award Construction Contract to Mercoza, Inc. in the Amount of \$344,928.00 for the Annual Sidewalk, Curb, and Gutter Repair Project (Staff Contacts: Roger Lee, Interim Public Works Director, 408-586-2602; and Chris Schroeder, Purchasing Agent, 408-586-3161)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/4/2022
	<u>Recommendation:</u> (1) Receive report on bids and award a construction contract to the lowest responsible and responsive bidder, Mercoza Inc., in the amount of \$344,928.00 for the Annual Sidewalk, Curb, and Gutter Repair Project; and (2) Authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$35,000.00.

Background:

In 2016, Council approved CIP No. 3426, Annual Sidewalk, Curb, and Gutter Repair (Project) to provide funding for the repairs and replacement of sidewalk and curb and gutter throughout the City. Project work, when completed, increases pedestrian safety and enhances accessibility for travel on sidewalks within the City right-of-way and facilities. To efficiently complete this work, the City semiannually issues an Invitation for Bids in Spring and Fall of each fiscal year.

On April 5, 2022, Council awarded IFB No. 22-056 Citywide Sidewalk Repairs (Spring 2022), which was the City's first consolidated sidewalk, curb, and gutter repair contract. This contract is on schedule with an expected completion date of early November 2022. When complete, this project will repair approximately 14,500 square feet of sidewalk and 804 linear feet of curb and gutter at 125 locations across the City. The contractor receiving the award was Mercoza, Inc. The contract award amount was \$327,680.00.

Analysis:

On August 11, 2022, the Purchasing Division released an Invitation for Bid (IFB) 23-012 for the second semiannual this Project. The IFB was publicly noticed in accordance with the City's municipal code and advertised on the City's website. Email notifications were sent to companies registered with the City via ProcureNow.com, the City's eProcurement system and the City maintained construction contractor list. As required by State law, four local plan rooms also received notification the release of the project on ProcureNow.com. Upon release, 1,830 firms received the solicitation notification, 25 firms downloaded the IFB documents, and four firms participated in the mandatory pre-bid meeting. The City issued two addendums to the solicitation and answered one question submitted by an interested firm.

The Purchasing Division received four bids by the September 21, 2022 deadline to respond to the IFB. After reviewing the required bid documents, Mercoza, Inc. was the lowest responsible bidder submitting a responsive bid. The bid submitted was within the City's estimate for these services.

BIDDING CONTRACTOR	BASE BID
1. Mercoza. Inc.	\$344,928.00
2. Asphalt Surfacing Inc.	\$431,260.00
3. FBD Vanguard Construction Inc.	\$570,461.00
4. Kerex Engineering Inc.	\$599,304.00

Staff recommends the City Council award the contract for the Project to Mercoza, Inc. for the base bid amount of \$344,928.00 and authorize the City Manager to execute contract change orders in an aggregate amount not to exceed \$35,000.00. This change order authority will allow for the more efficient administration of the repairs outlined in this project due to the expected discovery of other issues likely to be identified during the excavation and removal of the damaged concrete.

Award of this contract will replace approximately 15,492 square feet of sidewalk and 1,264 linear feet of curb and gutter at 50 locations across the City. When completed, 50 outstanding MyMilpitas work order requests will be resolved.

Policy Alternatives:

Alternative 1: Direct City staff to provide the required services with in-house resources.

Pros: Increased pedestrian safety, accessibility and drainage.

Cons: City staff does not have the resources to timely complete this Project and complete other required maintenance.

Reason not recommended: The City does not have enough resources to perform the sidewalk repairs, as well as continue staff work on operation and maintenance of the City's infrastructure. The timeline for the replacement of the sidewalk would be delayed.

Fiscal Impact:

The proposed Project contract is in the amount of \$344,928.00, with the authority to execute contract change order(s) in the aggregate amount not to exceed \$35,000.00 for a total authorized contract amount of \$379,928. Sufficient funds for the project are available in CIP 3426 – Annual Sidewalk, Curb, and Gutter Repair. Funding for CIP 3426 comes from the Gas Tax Fund, General Government CIP Fund, Sewer Fund, Sewer Infrastructure Fund, and Water Fund. As of September 28, 2022, the balance in CIP 3426 is \$431,375.

California Environmental Quality Act:

The City Council's action to award a contract for sidewalk repair exempt from environmental review pursuant to CEQA Guideline 15301(c) allowing for repair of sidewalks as the proposed work contemplates the repair and maintenance of existing public facilities (sidewalks) involving negligible or no expansion of use.

Recommendation:

1. Receive report on bids and award a construction contract to the lowest responsible bidder submitting a responsive bid, Mercoza, Inc., in the amount of \$344,928.00 for the Annual Sidewalk, Curb, and Gutter Repair Project.
2. Authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$35,000.00.

Attachment

1. Long-Form Construction Contract with Mercoza, Inc. for Project 23-012 Annual Sidewalk, Curb, and Gutter Repair Project



CITY OF MILPITAS

MILPITAS, CALIFORNIA

CONTRACT DOCUMENTS AND SPECIFICATIONS FOR

IFB NO. 23-012

Citywide Sidewalk

Repairs (Fall 2022)

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00 11 16 – NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that the City Council of the City of Milpitas ("City") invites and will receive electronic Bids up to but not later than 2:00 p.m. on Friday, September 16, 2022 via ProcureNow.com, the City's eProcurement website, for the furnishing to City of all labor, equipment, materials, tools, services, transportation, permits, utilities, and all other items necessary for **Citywide Sidewalk Repairs** (the "Project"). At said time, Bids will be publicly opened and read aloud at the City Office. Bids received after said time shall be returned unopened. Bids shall be valid for a period of 90 calendar days after the Bid opening date.

Bids must be submitted on the City's Bid Forms. Bidders may obtain a copy of the Contract Documents from ProcureNow.com and no other method of obtaining documents may be accepted. To the extent required by section 20103.7 of the Public Contract Code, upon request from a contractor plan room service, the City shall provide an electronic copy of the Contract Documents at no charge to the contractor plan room.

It is the responsibility of each prospective bidder to download and print all Bid Documents for review and to verify the completeness of Bid Documents before submitting a bid. Any Addenda will be posted ProcureNow.com. It is the responsibility of each prospective bidder to check ProcureNow.com on a daily basis through the close of bids for any applicable addenda or updates. The City does not assume any liability or responsibility based on any defective or incomplete copying, excerpting, scanning, faxing, downloading or printing of the Bid Documents. Information on ProcureNow.com may change without notice to prospective bidders. The Contract Documents shall supersede any information posted or transmitted by ProcureNow.com.

Each Bid shall be accompanied by cash, a certified or cashier's check, or Bid Bond secured from a surety company satisfactory to the City Council, the amount of which shall not be less than ten percent (10%) of the submitted Total Bid Price, made payable to City of Milpitas as bid security. The bid security shall be provided as a guarantee that within five (5) working days after the City provides the successful bidder the Notice of Award, the successful Bidder will enter into a contract and provide the necessary bonds and certificates of insurance. The bid security will be declared forfeited if the successful Bidder fails to comply within said time. No interest will be paid on funds deposited with City.

A **MANDATORY** Pre-Bid Conference is scheduled for Tuesday, August 23, 2022 at 2:00 p.m. PDT to review the Project's existing conditions at www.Zoom.com and a link to the pre-bid conference shall be located at ProcureNow.com. Representatives of the City and consulting engineers, if any, will be present. Bidders need only to attend one Pre-Bid Conference. Questions asked by Bidders at the Pre-Bid Conference not specifically addressed within the Contract Documents shall be answered in writing, and issued as an Addendum. Bids will not be accepted from any bidder who did not attend one of the mandatory Pre-Bid Conferences.

The successful Bidder will be required to furnish a Faithful Performance Bond and a Labor and Material Payment Bond each in an amount equal to one hundred percent (100%) of the Contract Price. Each bond shall be in the forms set forth herein, shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120, and that is a California admitted surety insurer.

Pursuant to Section 22300 of the Public Contract Code of the State of California, the successful Bidder may substitute certain securities for funds withheld by City to ensure its performance under the contract.

Pursuant to Labor Code Section 1773, City has obtained the prevailing rate of per diem wages and the prevailing wage rate for holiday and overtime work applicable in Santa Clara County from the Director of the Department of Industrial Relations for each craft, classification, or type of worker needed to execute this contract. A copy of these prevailing wage rates may be obtained via the internet at: www.dir.ca.gov/dlsr/

In addition, a copy of the prevailing rate of per diem wages is available at the City's Department of Public Works and shall be made available to interested parties upon request. The successful bidder shall post a copy of the prevailing wage rates at each job site. It shall be mandatory upon the Bidder to whom the Contract is awarded, and upon any subcontractors, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the Contract, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No Bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the Bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In bidding on this Project, it shall be the Bidder's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this contract and applicable law in its Bid.

Unless otherwise provided in the Instructions for Bidders, each Bidder shall be a licensed contractor pursuant to sections 7000 et seq. of the Business and Professions Code in the following classification(s) throughout the time it submits its Bid and for the duration of the contract: **General Contractor – A.**

Substitution requests shall be made within 35 calendar days after the award of the contract. Pursuant to Public Contract Code Section 3400(b), the City may make findings designating that certain additional materials, methods or services by specific brand or trade name other than those listed in the Standard Specifications be used for the Project. Such findings, if any, as well as the materials, methods or services and their specific brand or trade names that must be used for the Project may be found in the Special Conditions.

City shall award the contract for the Project to the lowest responsive, responsible Bidder as determined by the City from the **BASE BID ALONE**. City reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding process.

For further information, contact Zachary DeVine, Senior Buyer, at City of Milpitas City Hall, 455 E. Calaveras Boulevard, Milpitas, CA 95035, zdevine@ci.milpitas.ca.gov or (408) 586-3163.

END OF NOTICE INVITING BIDS

00 21 13 – INSTRUCTIONS TO BIDDERS

1. SECURING DOCUMENTS

Bids must be submitted to the City on the Bid Forms which are a part of the Bid Package for the Project. Bid and Contract Documents may be obtained from the City as specified in the Notice Inviting Bids. Prospective bidders are encouraged to telephone in advance to determine the availability of Contract Documents. Any charge for the Contract Documents is stated in the Notice Inviting Bids.

The City may also make the Contract Documents available for review at one or more plan rooms, as indicated in the Notice Inviting Bids. Please Note: Prospective Bidders who choose to review the Contract Documents at a plan room must contact the City via Prints Charles Reprographics to obtain the required Contract Documents if they decide to submit a bid for the Project.

Addenda, if any, issued during the bid period will be posted on www.printscharlesrepro.com. Failure to acknowledge addenda may make a bid nonresponsive and not eligible for award of the contract.

2. EXAMINATION OF SITE AND CONTRACT DOCUMENTS

At its own expense and prior to submitting its Bid, each Bidder shall visit the site of the proposed work and fully acquaint itself with the conditions relating to the construction and labor required so that the Bidder may fully understand the work, including but not limited to difficulties and restrictions attending the execution of the work under the contract. Each Bidder shall carefully examine the Drawings, and shall read the Specifications, Contract, and all other documents referenced herein. Each Bidder shall also determine the local conditions which may in any way affect the performance of the work, including local tax structure, contractors' licensing requirements, availability of required insurance, the prevailing wages and other relevant cost factors, shall familiarize itself with all federal, state and local laws, ordinances, rules, regulations and codes affecting the performance of the work, including the cost of permits and licenses required for the work, and shall make such surveys and investigations, including investigations of subsurface or latent physical conditions at the site or where work is to be performed as may be required. Bidders are responsible for consulting the standards referenced in the Contract. The failure or omission of any Bidder to receive or examine any contract documents, forms, instruments, addenda, or other documents, or to visit the site and acquaint itself with conditions there existing shall in no way relieve any Bidder from any obligation with respect to its Bid or to the contract and no relief for error or omission will be given except as required under State law. The submission of a Bid shall be taken as conclusive evidence of compliance with this Article.

Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Project. Federal and State laws require the City and its contractors to appropriately manage such waters pursuant to the requirements of California State Water Resources Control Board Order Number 2009-0009-DWQ and any amendment or renewal thereof, the Federal Clean Water Act, and the California Porter Cologne Water Quality Control Act. By submitting a Bid, each Bidder acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3. INTERPRETATION OF DRAWINGS AND DOCUMENTS

Prospective Bidders unclear as to the true meaning of any part of the Drawings, Specifications or other proposed contract documents may submit to the Engineer of the City a written request for interpretation. The prospective Bidder submitting the request is responsible for prompt delivery. Interpretation of the Drawings, Specifications or other proposed contract documents will be made only by a written addendum duly issued and a copy of such addenda will be mailed or delivered to each prospective Bidder who has purchased a set of Drawings and Specifications. The City will not be responsible for any other explanation or interpretations of the proposed documents. If a Prospective Bidders becomes aware of any errors or omissions in any part of the Contract Documents, it is the obligation of the Prospective Bidder to promptly bring it to the attention of the City.

4. INSPECTION OF SITE; PRE-BID CONFERENCE

Each prospective bidder is responsible for fully acquainting itself with the conditions of the Project Site (which may include more than one site), as well as those relating to the construction and labor of the Project, to fully understand the facilities, difficulties and restrictions which may impact the cost or effort required to complete the Project. To this end, a Pre-Bid Meeting and Site Walk will be held on the date(s) and time(s) indicated in the Notice Inviting Bids.

5. ADDENDA

The City reserves the right to revise the Contract Documents prior to the Bid opening date. Revisions, if any, shall be made by written Addenda. All Addenda issued by the City shall be included in the Bid and made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the City issues an Addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of Bids, the City will extend the deadline for submission of Bids. The City may determine, in its sole discretion, whether an Addendum warrants postponement of the Bid submission date. Each prospective Bidder shall provide City a name, address, email address, and facsimile number to which Addenda may be sent, as well as a telephone number by which the City can contact the Bidder. Any Addenda will be posted on www.procurenw.com. Please Note: Bidders are responsible for ensuring that they have received any and all Addenda. To this end, each Bidder should contact Zachary DeVine, Senior Buyer, at City of Milpitas City Hall, 455 E. Calaveras Boulevard, Milpitas, CA 95035 or (408) 586-3163 to verify that it has received all Addenda issued, if any, prior to the Bid opening. The Bidder shall indicate the Addenda received prior to bidding in the space provided in the Bid Form. Failure to indicate all Addenda may be sufficient cause for rejecting the Bid.

6. ALTERNATE BIDS

If alternate bid items are called for in the Contract Documents, the time required for completion of the alternate bid items has already been factored into the Contract duration and no additional Contract time will be awarded for any of the alternate bid items. The City may elect to include one or more of the alternate bid items, or to otherwise remove certain work from the Project scope of work. Accordingly, each bidder must ensure that each bid item contains a proportionate share of profit, overhead, and other costs or expenses which will be incurred by the bidder.

7. COMPLETION OF BID FORMS

Bids shall only be prepared using copies of the Bid Forms which are included in the Contract Documents. The use of substitute Bid Forms other than clear and correct photocopies of those provided by the City will not be permitted. Bids shall be executed by an authorized signatory as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting "N/A" where applicable), and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. **USE OF BLACK OR BLUE INK, INDELIBLE PENCIL, OR A TYPEWRITER IS REQUIRED.** Deviations in the Bid Forms may result in the Bid being deemed non-responsive.

8. MODIFICATIONS OF BIDS

Each Bidder shall submit its Bid in strict conformity with the requirements of the Contract Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Bid may render it non-responsive and may cause its rejection. Bidders shall not delete, modify, or supplement the printed matter on the Bid Forms, or make substitutions thereon. Oral, telephonic and electronic modifications will not be considered.

9. SUBCONTRACTORS

Bidder shall set forth the name, address of the place of business, and contractor license number of each subcontractor who will perform work, labor, furnish materials or render services to the bidder on said contract and each subcontractor licensed by the State of California who, under subcontract to bidder, specially fabricates and installs a portion of the Work described in the Drawings and Specifications in an amount in excess of one half of one percent (0.5%) of the total bid price, and shall indicate the portion of the work to be done by such subcontractor in accordance with Public Contract Code Section 4104.

The successful bidder will be required to self-perform at least 60% of the work.

10. LICENSING REQUIREMENTS

Pursuant to Business and Professions Code Section 7028.15 and Public Contract Code Section 3300, all bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Business and Professions Code Section 7028.5, the City shall consider any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be nonresponsive, and the City shall reject the Bid. The City shall have the right to request, and Bidders shall provide within ten (10) calendar days, evidence satisfactory to the City of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract.

Notwithstanding anything contained herein, if the Work involves federal funds, the Contractor shall be properly licensed by the time the Contract is awarded, pursuant to the provisions of Public Contract Code section 20103.5.

11. BID GUARANTEE (BOND)

Each bid shall be accompanied by: (a) cash; (b) a certified or cashier's check made payable to City of Milpitas; or (c) a Bid Bond secured from a surety company satisfactory to the City Council, the amount of which shall not be less than ten percent (10%) of the Total Bid Price, made payable to City of Milpitas as bid security. Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The bid security shall be provided as a guarantee that within ten (10) working days after the City provides the successful bidder the Notice of Award, the successful bidder will enter into a contract and provide the necessary bonds and certificates of insurance. The bid security will be declared forfeited if the successful bidder fails to comply within said time, and City may enter into a contract with the next lowest responsive responsible bidder, or may call for new bids. No interest shall be paid on funds deposited with the City. City will return the security accompanying the bids of all unsuccessful bidders no later than 60 calendar days after award of the contract.

12. IRAN CONTRACTING ACT OF 2010

In accordance with Public Contract Code Section 2200 *et seq.*, the City requires that any person that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the City with respect to goods or services of one million dollars (\$1,000,000) or more, certify at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

The form of such Iran Contracting Certificate is included with the bid package and must be signed and dated under penalty of perjury.

13. NONCOLLUSION DECLARATION

Bidders on all public works contracts are required to submit a declaration of noncollusion with their bid. This form is included with the bid package and must be signed and dated under penalty of perjury.

14. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. To this end, Bidder shall sign and submit with its Bid the Public Works Contractor Registration Certification on the form provided, attesting to the facts contained therein. Failure to submit this form may render the bid non-responsive. In addition, each Bidder shall provide the registration number for each listed subcontractor in the space provided in the Designation of Subcontractors form.

15. WAGE THEFT CERTIFICATION

Bidders on public works contracts are required to submit a certification disclosing whether the Bidder or any of its proposed subcontractors has been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline.

16. BIDDER INFORMATION AND EXPERIENCE FORM

Each Bidder shall complete the questionnaire provided herein and shall submit the questionnaire along with its Bid. Failure to provide all information requested within the questionnaire along with the Bid may cause the bid to be rejected as non-responsive. The City reserves the right to reject any Bid if an investigation of the information submitted does not satisfy the Engineer that the Bidder is qualified to properly carry out the terms of the contract.

17. WORKERS' COMPENSATION CERTIFICATION

In accordance with the provisions of Labor Code Section 3700, Contractor shall secure the payment of compensation to its employees. Contractor shall sign and file with the City the following certificate prior to performing the work under this Contract:

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

The form of such Workers' Compensation Certificate is included as part of this document.

18. SIGNING OF BIDS

All Bids submitted shall be executed by the Bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom.

If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

19. SUBMISSION OF SEALED BIDS

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the Bid Guarantee and other required materials, in a sealed

envelope, addressed and delivered or mailed, postage prepaid, to the City Clerk before the time and day set for the receipt of bids. The envelope shall bear the title of the work and the name of the bidder. No oral or telephonic bids will be considered. No forms transmitted via e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by the City as provided herein. Bids received after the time and day set for the receipt of bids shall be returned to the bidder unopened.

Only where expressly permitted in the Notice Inviting Bids may bidders submit their bids via electronic transmission pursuant to Public Contract Code sections 1600 and 1601. Any acceptable method(s) of electronic transmission shall be stated in the Notice Inviting Bids. City may reject any bid not strictly complying with City's designated methods for delivery.

20. OPENING OF BIDS

At the time and place set for the opening and reading of bids, or any time thereafter, each and every bid received prior to the time and day set for the receipt of bids will be publicly opened and read. The City will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the bidder. It is the bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the date(s) and time(s) indicated.

The public reading of each bid will include the following information:

- A. The name and business location of the bidder.
- B. The nature and amount of the bid security furnished by bidder.
- C. The bid amount.

Bidders or their representatives and other interested persons may be present at the opening of the bids. The City may, in its sole discretion, elect to postpone the opening of the submitted Bids. The City reserves the right to reject any or all Bids and to waive any informality or irregularity in any Bid.

21. WITHDRAWAL OF BID

Any bid may be withdrawn either personally or by written request, incurring no penalty, at any time prior to the scheduled closing time for receipt of bids. Requests to withdraw bids shall be worded so as not to reveal the amount of the original bid. Withdrawn bids may be resubmitted until the time and day set for the receipt of bids, provided that resubmitted bids are in conformance with the instructions herein.

Bids may be withdrawn after bid opening only by providing written notice to City within five (5) working days of the bid opening and in compliance with Public Contract Code Section 5100 *et seq.*, or as otherwise may be allowed with the consent of the City.

22. BIDDERS INTERESTED IN MORE THAN ONE BID

No Bidder shall be allowed to make, file or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder, is not thereby

disqualified from submitting a sub-proposal or quoting prices to other bidders. No person, firm, corporation, or other entity may submit a sub-proposal to a Bidder, or quote prices of materials to a Bidder, when also submitting a prime Bid on the same Project.

23. SUBSTITUTION OF SECURITY

The Contract Documents call for monthly progress payments based upon the percentage of the Work completed. The City will retain a percentage of each progress payment as provided by the Contract Documents. At the request and expense of the successful Bidder, the City will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

24. PREVAILING WAGES

The City has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are available at the City or may be obtained online at <http://www.dir.ca.gov>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s).

25. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code Sections 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

26. INSURANCE REQUIREMENTS

Prior to commencing work, the successful bidder shall purchase and maintain insurance as set forth in the General Conditions.

27. PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS

The successful bidder will be required to furnish a Labor and Material Payment Bond and a Faithful Performance Bond each in an amount equal to one hundred percent (100%) of the contract price. Each bond shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120 and is admitted by the State of California. Each bond shall be accompanied, upon the request of City, with all documents required by California Code of Civil Procedure Section 995.660 to the extent required by law. All bonding and insurance requirements shall be completed and submitted to City within ten (10) working days from the date the City provides the successful bidder with the Notice of Award.

28. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the Work will be located, unless otherwise expressly provided by the Contract Documents.

29. FILING OF BID PROTESTS

Bidders may file a “protest” of a Bid with the City of Milpitas City Engineer. In order for a Bidder’s protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after the bid opening date;
- B. Clearly identify the specific irregularity or accusation;
- C. Specify in detail the grounds for protest and the facts supporting the protest; and
- D. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, the City may reject the protest without further review.

If the protest is timely and complies with the above requirements, the City Engineer, or other designated City staff member, shall review the protest, any response from the challenged Bidder(s), and all other relevant information. The City Engineer will provide a written decision to the protestor.

The procedure and time limits set forth in this Article are mandatory and are the sole and exclusive remedy in the event of a Bid protest. Failure to comply with these procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings.

30. BASIS OF AWARD; BALANCED BID

The City shall award the Contract to the lowest responsible Bidder submitting a responsive Bid. The lowest Bid will be determined on the basis of the Total Base Bid alone unless otherwise set forth in the Notice Inviting Bids.

The City may reject any Bid which, in its opinion when compared to other Bids received or to the City’s internal estimates, does not accurately reflect the cost to perform the Work. The City may reject as non-responsive any Bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

31. AWARD PROCESS

Once all Bids are opened and reviewed to determine the lowest responsive and responsible Bidder, the City Council may award the contract. The apparent successful Bidder should begin to prepare the following documents: (1) the Performance Bond; (2) the Payment Bond; and (3) the required insurance certificates and endorsements. Once the City notifies the Bidder of the award, the Bidder will have fourteen (14) calendar days from the date of this notification to

execute the Contract and supply the City with all of the required documents and certifications. Regardless of whether the Bidder supplies the required documents and certifications in a timely manner, the Contract time will begin to run twenty-one (21) calendar days from the date of the Notice of Award. Once the City receives all of the properly drafted and executed documents, certifications from the Bidder, and any other documents as maybe specified in the Contract Documents, the City shall issue a Notice to Proceed to that Bidder.

32. EXECUTION OF CONTRACT

As required herein the Bidder to whom an award is made shall execute the Contract in the amount determined by the Contract Documents. The City may require appropriate evidence that the persons executing the Contract are duly empowered to do so. The Contract and bond forms to be executed by the successful Bidder are included within these Specifications and shall not be detached.

00 41 43 – BID FORMS**1.1 Bid Acknowledgement.****NAME OF BIDDER:** Mercoza

To the Honorable City Council of the City of Milpitas, attn City Clerk:

The undersigned hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specifications, and all addenda, if any for the following Project:

CITYWIDE SIDEWALK REPAIRS (FALL 2022) – CUP 23-012

- A We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project, as described and in strict conformity with the Contract Documents for the Total Bid Price indicated herein.
- B The undersigned agrees that this Bid constitutes a firm offer to the City which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the Bid opening, or until a Contract for the Work is fully executed by the City and a third party, whichever is earlier.
- C The undersigned has by careful examination of the Contract Documents and any addenda thereto, and by examination of the actual Site conditions, satisfied itself as to the nature and location of all Work, the plans and specifications, and the general and local conditions to be encountered in the performance of any Work, the requirements of the Contract and all other matters which can in any way affect the Work or the cost thereof.
- D The undersigned acknowledges receipt, understanding, and full consideration of the following addenda to the Contract Documents:
- List Addenda No's. #1, #2
- E Attached hereto and by this reference incorporated herein and made a part of this Bid are the following forms which have been completed and executed by undersigned Bidder:
1. Designation of Subcontractors form.
 2. Bidder Information and Experience form.
 3. Noncollusion Declaration form.
 4. Iran Contracting Act Certification form.
 5. Public Works Contractor Registration Certification form.



CITY OF MILPITAS

PURCHASING DIVISION

455 East Calaveras Boulevard, Milpitas, California 95035-5411 www.ci.milpitas.ca.gov
Phone: 408-586-3161 Fax: 408-586-3170

15 September 2022

IFB No. 23-012 - CITYWIDE SIDEWALK REPAIRS (FALL 2022)

Addendum No. 1

To all Bidders:

Please note the following important changes to IFB No. 23-012:

1. The City hereby adds the following verbiage to Exhibit "B" – Scope of Work, Section IV EXECUTION, subsection Repair of Sidewalk, Curbs & Gutters:

"Contractor shall remove and replace 12" of street asphalt the entire length adjacent to the curb and gutter repair. The replacement AC shall be installed with 6" minimum thickness deep lift patch or match existing, whichever is greater."

2. The City has extended the due date for bids to Wednesday, 12 September 2022 at 2:00 p.m. PDT.

All other provisions of the documents and specification shall remain in full force and effect.

Respectfully,

Zachary DeVine
Senior Buyer
City of Milpitas



CITY OF MILPITAS

PURCHASING DIVISION

455 East Calaveras Boulevard, Milpitas, California 95035-5411 www.ci.milpitas.ca.gov

Phone: 408-586-3161 Fax: 408-586-3170

16 September 2022

IFB No. 23-012 - CITYWIDE SIDEWALK REPAIRS (FALL 2022)

Addendum No. 2

To all Bidders:

Please note the following important changes to IFB No. 23-012:

1. Correcting a typographical error in Addendum No. 1, the City has extended the due date for bids to **Wednesday, 21 September 2022** at 2:00 p.m. PDT.

All other provisions of the documents and specification shall remain in full force and effect.

Respectfully,

Zachary Devine
Senior Buyer
City of Milpitas

6. Attached is the completed Wage Theft Certification form.
7. Contractor's Certificate Regarding Workers' Compensation form.
8. Bid Guarantee in the amount of not less than 10% of the Total Bid Price.

F If awarded a contract, the undersigned hereby agrees to sign the contract and furnish the necessary bonds and certificates of insurance within fourteen (14) days after the City provides the successful bidder with the Notice of Award.

G Upon receipt of the signed contract and other required documents, the contract will be executed by the City, after which the City will prepare a letter giving Contractor Notice to Proceed. The official starting date shall be the date of the Notice to Proceed, unless otherwise specified. The undersigned agrees to begin the Work within ten (10) working days of the date of the Notice to Proceed, unless otherwise specified.

H Bidder is an individual _____, or corporation X, or partnership _____, organized under the laws of the State of California.

I ~~Bidder represents and confirms that license(s) required by California State Contractor's License Law for the performance of the subject project are in full effect and proper order. The following are the Bidder's applicable license number(s), with their expiration date(s) and class of license(s):~~

988861, 06/30/2024, A-General, C-8

If the Bidder is a joint venture, each member of the joint venture must include the required licensing information.

(SIGNATURES CONTINUED ON NEXT PAGE)

J The undersigned that the representations made herein herein are true and correct and all of the information submitted in connection with this Bid are made under penalty of perjury under the laws of the State of California.

Executed at SAN JOSE, on this 16TH day of SEPTEMBER, 2022

(Bidder's Name – Print or Type)

Jason A Duran Martinez, CEO/CFO

(Corporate Seal)

(Name and Title)

(Signature)

Names of individual members of firm or names and titles of all officers of corporation and their addresses are listed below:

Name Jason A Duran Martinez Title CEO/CFO

Complete Address 75 E Santa Clara St, Ste 900, San Jose, CA 95113

Phone 408-613-8067 Fax 408-904-5615

Name Amador Duran Title Secretary

Complete Address 75 E Santa Clara St, Ste 900, San Jose, CA 95113

Phone 866-518-4492 Fax 408-904-5615

Name _____ Title _____

Complete Address _____

Phone _____ Fax _____

Name _____ Title _____

Complete Address _____

Phone _____ Fax _____

1.2 BID SCHEDULE

NO.	ITEM DESCRIPTION	UNIT OF MEASURE	EST. QTY.	UNIT PRICE	TOTAL ITEM PRICE
1.	Mobilization	LS	1	\$10	\$10
2.	Diversion of Recyclable Waste Materials	LS	1	\$10	\$10
3.	Curb And Gutter Replacement	Linear Feet	1,264	\$40	\$50,560
4.	Sidewalk Repair/Replacement	Square Feet	15,492	\$19	\$294,348
TOTAL BASE BID PRICE					\$344,928

Bidders must provide pricing for every bid item. The costs for any Work shown or required in the Contract Documents, but not specifically identified as a line item are to be included in the related line items and no additional compensation shall be due to Contractor for the performance of the Work.

In case of discrepancy between the Unit Price and the Total Item Price set forth for a unit basis item, the unit price shall prevail and shall be utilized as the basis for determining the lowest responsive, responsible Bidder. However, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Item Price" column, then the amount set forth in the "Item Price" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the Unit Price.

For purposes of evaluating Bids, the City will correct any apparent errors in the extension of unit prices and any apparent errors in the addition of lump sum and extended prices.

The estimated quantities for Unit Price items are for purposes of comparing Bids only and the City makes no representation that the actual quantities of work performed will not vary from the estimates. Final payment shall be determined by the Engineer from measured quantities of work performed based upon the Unit Price.

TOTAL BID PRICE BASED ON BID SCHEDULE TOTAL OF UNIT PRICES FOR CITYWIDE SIDEWALK REPAIRS (SPRING 2022)	
\$	\$344,928
Total Bid Price in Numbers	
\$	Three hundred forty-four thousand nine hundred twenty-eight
Total Bid Price in Written Form	
In case of discrepancy between the written price and the numerical price, the written price shall prevail.	

If the Contract Documents specify Alternate Bid items, the following Alternate Bid amounts shall be added to or deducted from the Total Bid Price entered above (please check the appropriate box), in the City's sole discretion. The City can choose to include any, all, or none of the Alternate Bid items in the Work. If the City selects any of the Alternate Bid items, the corresponding Alternate Bid prices shall be added to or deducted from Base Bid Price for the Work. The City can award/select Alternate Bid items at any time(s).

ALTERNATE BIDS	BID PRICE (IN WRITTEN FORM)	BID PRICE (IN NUMBERS)
ALTERNATE #1 ☐ Add ☐ Deduct		
ALTERNATE #2 ☐ Add ☐ Deduct		
ALTERNATE #3 ☐ Add ☐ Deduct		
ALTERNATE #4 ☐ Add ☐ Deduct		
ALTERNATE #5 ☐ Add ☐ Deduct		
ALTERNATE #6 ☐ Add ☐ Deduct		

1.3 List of Subcontractors

In compliance with the Subletting and Subcontracting Fair Practices Act Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the Public Contract Code of the State of California and any amendments thereof, Bidder shall set forth below: (a) the name and the location of the place of business, (b) the California contractor license number, (c) the DIR public works contractor registration number unless exempt pursuant to Labor Code Sections 1725.5 and 1771.1, and (d) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the work or improvement to be performed under this Contract in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Bidder shall list each subcontractor who will perform work or labor or render service to the Bidder in or about the work in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If a Bidder fails to specify a subcontractor or if a contractor specifies more than one subcontractor for the same portion of work, then the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself.

As stated in the Instructions to Bidders, Bidder is required to complete at least 60% of the contract value with its own forces. Bidder shall indicate the value of each subcontractor's work and the sum may not exceed the allowable amount.

Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	% of the Work
N/A					

Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	% of the Work

(Attach additional sheets if necessary)

Name of Bidder Mercoza

Signature 

Name and Title Jason A Duran Martinez, CEO/CFO

Dated 09/16/2022

1.4 Bidder Information and Experience Form**A. INFORMATION ABOUT BIDDER**

NOTE: Indicate not applicable ("N/A") where appropriate. If Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

- 1.0 Name of Bidder: Mercoza
- 2.0 Type, if Entity: Corporation
- 3.0 Bidder Address: 75 E Santa Clara St, Ste 900, San Jose, CA 95113
Mailing: PO Box 794, San Jose, CA 95106
408-904-5615 408-613-8067
Facsimile Number Telephone Number
jason@mercoza.com
Email Address
-
- 4.0 How many years has Bidder's organization been in business as a Contractor?
8 Years
- 5.0 How many years has Bidder's organization been in business under its present name?
8 Years
- 5.1 Under what other or former names has Bidder's organization operated?
N/A
- 6.0 If Bidder's organization is a corporation, answer the following:
- 6.1 Date of Incorporation: 01/03/2018
- 6.2 State of Incorporation: CA
- 6.3 President's Name: Jason Amador Duran Martinez
- 6.4 Vice-President's Name(s): N/A
- 6.5 Secretary's Name: Amador Duran
- 6.6 Treasurer's Name: Jason Amador Duran Martinez
- 7.0 If an individual or a partnership, answer the following:
- 7.1 Date of Organization: N/A

7.2. Name and address of all partners (state whether general or limited partnership):

N/A

8.0 If other than a corporation or partnership, describe organization and name principals:

N/A

9.0 List other states in which Bidder's organization is legally qualified to do business.

N/A

10.0 What type of work does the Bidder normally perform with its own forces?

Concrete

11.0 Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

N/A

12.0 Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

N/A

13.0 List Trade References:

White Cap

Central Concrete

Statewide Safety Systems

Grianger

14.0 List Bank References (Bank and Branch Address):

Wells Fargo, West Gate Branch
1730 Saratoga Ave, San Jose, CA 95129

15.0 Name of Bonding Company and Name and Address of Agent:

Philadelphia Indemnity Insurance Company
Justin L Kelly, 3419 Via Lido, Ste 424, Newport Beach, CA 92663

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B. LIST OF CURRENT PROJECTS (BACKLOG)

[Duplicate Page if needed for listing additional current projects.**]**

[illegible]

C. LIST OF COMPLETED PROJECTS – LAST THREE YEARS

[**Duplicate Page if needed for listing additional completed projects.**]

[illegible]

D. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE***Personnel:***

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

1. List each person's job title, name and percent of time to be allocated to this project:

Project Manager/Supervisor, Jason Duran, full time

2. Summarize each person's specialized education:

Associates Degree

3. List each person's years of construction experience relevant to the project:

18 Years

4. Summarize such experience:

Project Management; Change Orders, Scheduling, RFI's, Submittals

Supervisor; Work directly with foreman, Train, safety management, material orders

Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the City.

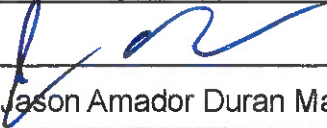
Additional Bidder's Statements:

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

E. VERIFICATION AND EXECUTION

These Bid Forms shall be executed only by a duly authorized official of the Bidder:

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder Mercoza
Signature 
Name Jason Amador Duran Martinez
Title CEO/CFO
Date 09/16/2022

1.5 Non-Collusion Declaration

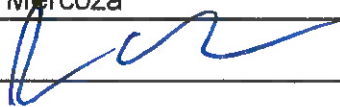
The undersigned declares:

I am the CEO/CFO of Mercoza, the party making the foregoing Bid.

The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid Price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid Price, or of that of any other Bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted his or her Bid Price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 09/16/2022 [date], at San Jose [city], California [state].

Name of Bidder Mercoza
 Signature 
 Name Jason Amador Duran Martinez
 Title CEO/CFO

1.6 Iran Contracting Act Certification.
(Public Contract Code section 2200 et seq.)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

- ☒ The Contractor is not:
- (1) identified on the current list of person and entities engaged in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
 - (2) a financial instruction that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
- ☐ The City has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the City will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
- ☒ The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

Signature: _____

Printed Name: Jason Amador Duran Martinez

Title: CEO/CFO

Firm Name: Mercoza

Date: 09/16/2022

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

1.7 Public Works Contractor Registration Certification

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Bidder: Mercoza

DIR Registration Number: 1000429912

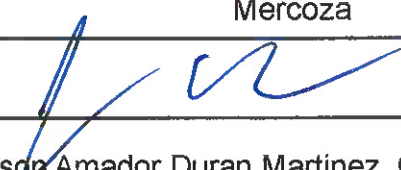
DIR Registration Expiration: 6/30/2023

Small Project Exemption: Yes or XX No

Unless Bidder is exempt pursuant to the small project exemption, Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Bidder Mercoza

Signature 

Name and Title Jason Amador Duran Martinez, CEO/CFO

Dated 09/16/2022

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

1.8 Wage Theft Certification

The Bidder certifies subject to penalty for perjury that the option checked below relating to the Bidder and its subcontractors' status in regard to wage theft is true and correct:

☒ Neither the Bidder nor any of its subcontractors have been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline.

☐ The Bidder or its subcontractors have been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline. For each violation, the Bidder shall provide a copy of (i) the final court order and/or final administrative decision/action; and (ii) documents demonstrating either that the order/decision/action has been fully satisfied, or if the order/decision/action has not been fully satisfied, documents evidencing a payment or other alternative plan approved by the court/government agency to satisfy the order/decision/action and proof that the Bidder or its subcontractors are in compliance with that plan as of the bid submission deadline.

☐ The City has exempted the Bidder from the requirements of the City of Milpitas Wage Theft Procurement Policy.

Signature: _____

Printed Name: Jason Amador Duran Martinez

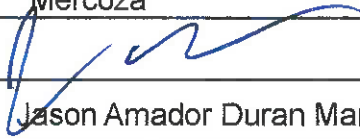
Title: CEO/CFO

Firm Name: Mercoza

Date: 09/16/2022

1.9 Contractor's Certificate Regarding Workers' Compensation.

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

Name of Bidder Mercoza
Signature 
Name Jason Amador Duran Martinez
Title CEO/CFO
Dated 09/16/2022

1.10 Bid Bond

Note: Not required when other form of Bidder's Security, e.g. cash, certified check or cashier's check, accompanies bid.

The makers of this bond are, Mercoza, as Principal, and The Gray Insurance Company, as Surety and are held and firmly bound unto the City of Milpitas, hereinafter called the City, in the penal sum of TEN PERCENT (10%) OF THE TOTAL BID PRICE of the Principal submitted to CITY for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated September 16, 20 22, for Citywide Sidewalk Repairs (Fall 2022)

If the Principal does not withdraw its Bid within the time specified in the Contract Documents; and if the Principal is awarded the Contract and provides all documents to the City as required by the Contract Documents; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall in affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 23rd day of August, 20 22, the name and corporate seal of each corporation.

(Corporate Seal)

Mercoza
Contractor/Principal
By JASON A. DUEAN MARTINEZ
Title CEO

(Corporate Seal)

The Gray Insurance Company
Surety
By Justin L. Keliey
Title Attorney in Fact

(Attach Attorney-in-Fact Certificate)

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF Santa Clara

On September 16, 2022, before me, Ernesto Reyes, Notary Public, personally appeared Jason A. Duran Martinez, who proved to me on the basis of satisfactory

Name(s) of Signer(s)

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

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



Signature of Notary Public

WITNESS my hand and official seal.

Ernesto Reyes

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☒ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

Bid Bond

Title or Type of Document

Number of Pages

August 23, 2022

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF BID BOND

ACKNOWLEDGMENT

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

State of California
County of ORANGE)

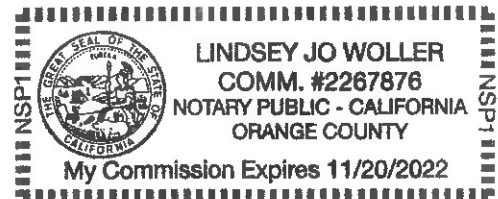
On August 23, 2022 before me, LINDSEY JO WOLLER, NOTARY PUBLIC
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)



**THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY**

GENERAL POWER OF ATTORNEY

Bond Number: N/A **Principal:** Mercoza
Project: City of Milpitas Citywide Sidewalk Repairs (Fall 2022)

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint: **Justin L. Kelley of Newport Beach, California jointly and severally** on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety, contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$15,000,000.00.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both The Gray Insurance Company and The Gray Casualty & Surety Company at meetings duly called and held on the 26th day of June, 2003.

"RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 28th day of October, 2021.



By:

Michael T. Gray

Michael T. Gray
President
The Gray Insurance Company

Cullen S. Piske

Cullen S. Piske
President
The Gray Casualty & Surety Company



State of Louisiana

ss:

Parish of Jefferson

On this 28th day of October, 2021, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican

Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

I, Mark S. Manguno, Secretary of The Gray Insurance Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 23rd day of August, 2022.

Mark S. Manguno

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 23rd day of August, 2022.

Leigh Anne Henican



00 52 13 – CONTRACT

This CONTRACT, No. 23-012 is made and entered into this _____ by and between City of Milpitas, sometimes hereinafter called “City,” and **MERCOZA**, sometimes hereinafter called “Contractor.”

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

a. **SCOPE OF WORK.** The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5, below, for the following Project:

CITYWIDE SIDEWALK REPAIRS (FALL 2022)

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor’s failure to comply with this obligation.

b. **TIME FOR COMPLETION.** Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City’s Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **One Hundred Eighty (180) calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

c. **CONTRACT PRICE.** The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Three Hundred Forty-Four Thousand Nine Hundred Twenty-Eight Dollars and Zero Cents (\$344,928.00)**. Payment shall be made as set forth in the General Conditions.

d. **LIQUIDATED DAMAGES.** In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum set forth in Section 00 73 13, Article 1.11 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

e. **COMPONENT PARTS OF THE CONTRACT.** The “Contract Documents” include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Bid Bond
- Designation of Subcontractors
- Information Required of Bidders
- Non-Collusion Declaration Form
- Iran Contracting Act Certification

Public Works Contractor Registration Certification
 Wage Theft Certification
 Performance Bond
 Payment (Labor and Materials) Bond
 General Conditions
 Special Conditions
 Technical Specifications
 Addenda
 Plans and Drawings
 Caltrans Standard Specifications, except Division 1
 Caltrans Standard Plans
 Applicable Local Agency Standards and Specifications, as last revised
 Approved and fully executed change orders
 Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

f. **PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.** Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

g. **INDEMNIFICATION.** Contractor shall provide indemnification and defense as set forth in the General Conditions.

h. **PREVAILING WAGES.** Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Administrative Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site.

i. **WAGE THEFT PREVENTION.**

(a) Contractor, and any subcontractor it employs to complete work under this Contract, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

(b) BY SIGNING THIS CONTRACT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS CONTRACT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS

SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS CONTRACT.

(c) If at any time during the term of this Contract, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Contract has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Contractor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Contract demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

(d) For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

(e) Failure to comply with any part of this Section constitutes a material breach of this Contract. Such breach may serve as a basis for immediate termination of this Contract and/or any other remedies available under this Contract and/or law.

(f) Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Contract and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties,
on the day and year above written.

CITY OF MILIPITAS

MERCOZA

By _____
Steven G. McHarris
City Manager

By: _____

Its: _____

Printed
Name: _____

**(CONTRACTOR'S SIGNATURE MUST BE
NOTARIZED AND CORPORATE
SEAL AFFIXED, IF APPLICABLE)**

APPROVED AS TO FORM:

By: _____
Michael Mutalipassi
City Attorney

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

 Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

 Title or Type of Document

 Number of Pages

 Date of Document

 Signer(s) Other Than Named Above

00 61 13 – BOND FORMS**1.1 Performance Bond.**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Milpitas, (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for _____, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

 Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

 Title or Type of Document

 Number of Pages

 Date of Document

 Signer(s) Other Than Named Above

00 61 13 – BOND FORMS**1.1 Performance Bond.**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Milpitas, (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for _____, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- i Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- ii Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- iii Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20____.

(Corporate Seal)

Contractor/Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

(The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

 Title(s)

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

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

 Title or Type of Document

 Number of Pages

 Date of Document

 Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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WITNESS my hand and official seal.

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☐ Other:

Signer is representing:
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 Title or Type of Document

 Number of Pages

 Date of Document

 Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PERFORMANCE BOND

1.2 Payment Bond (Labor and Materials).

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Milpitas (hereinafter designated as the "City"), by action taken or a resolution passed _____, 20____, has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: _____ (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or

under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

Notary Acknowledgment

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STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

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- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

 Title or Type of Document

 Number of Pages

 Date of Document

 Signer(s) Other Than Named Above

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STATE OF CALIFORNIA

COUNTY OF _____

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

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 Number of Pages

 Date of Document

 Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND

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00 72 13 – GENERAL CONDITIONS

ARTICLE 1 DEFINED TERMS

Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

- A. Act of God – An earthquake of magnitude of 3.5 or higher on the Richter scale or a tidal wave.
- B. Addenda -- Written or graphic instruments issued prior to the submission of Bids which clarify, correct, or change the Contract Documents.
- C. Additional Work -- New or unforeseen work will be classified as “Additional Work” when the City’s Representative determines that it is not covered by the Contract.
- D. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
- E. Bid -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices and other terms for the Work to be performed.
- F. Bidder -- The individual or entity who submits a Bid directly to the City.
- G. Caltrans Standard Specifications - Standard Specifications of the State of California, Department of Transportation, Current edition. Any reference therein to a State agency or officer shall be interpreted as if the corresponding City office or agent acting under this contract were so specified.
- H. Caltrans Standard Plans - Standard plans of the State of California, Department of Transportation, Current edition. All metric measurements or quantities in the Caltrans Standard Plans shall be disregarded, and equivalent United States measures used.
- I. Change Order (“CO”) -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
- J. Change Order Request (“COR”) -- A request made by the Contractor for an adjustment in the Contract Price and/or Contract Times as the result of a Contractor-claimed change to the Work. This term may also be referred to as a Change Order Proposal (“COP”), or Request for Change (“RFC”).
- K. City -- The City of Milpitas.

- L. City Council, Council -- The City Council of the City.
- M. City's Representative -- The individual or entity as identified in the Special Conditions to act as the City's Representative.
- N. Claim -- A demand or assertion by the City or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
- O. Contract -- The entire integrated written agreement between the City and Contractor concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
- P. Contract Documents -- The documents listed in Section 00 52 13, Article 5. Some documents provided by the City to the Bidders and Contractor, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
- Q. Contract Price -- Amount to be paid by the City to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.
- R. Contract Times -- The number of days or the dates stated in the Contract Documents to: achieve defined Milestones, if any; and to complete the Work so that it is ready for final payment.
- S. Contractor -- The individual or entity with which the City has contracted for performance of the Work.
- T. Contractor's Designated On-Site Representative -- The Contractor's Designated On-Site Representative will be as identified in Section 00 72 13, Article 3 and shall not be changed without prior written consent of the City.
- U. Daily Rate -- The Daily Rate stipulated in the Contract Documents as full compensation to the Contractor due to the City's unreasonable delay to the Project that was not contemplated by the parties.
- V. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
- W. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
- X. Demobilization -- The complete dismantling and removal by the Contractor of all of the Contractor's temporary facilities, equipment, and personnel at the Site.

- Y. Drawings -- That part of the Contract Documents prepared by of the Engineer of Record which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
- Z. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
- AA. Engineer, whenever not qualified, shall mean the City Engineer or its designee, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them. On all questions concerning the acceptance of materials, machinery, the classifications of material, the execution of work, conflicting interest of the contractors performing related work and the determination of costs, the decision of the Engineer, duly authorized by the City Council, shall be binding and final upon both parties.
- BB. Engineer of Record -- The individual, partnership, corporation, joint venture, or other legal entity named as such in Section 00 73 13, Article 1.1. or any succeeding entity designated by the City.
- CC. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time or, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a class I, class II, or class III disposal site in accordance with provisions of existing law, whichever is more restrictive.
- DD. Holiday -- The Holidays are defined as legal Federal, State, and City holidays including:

New Year's Day - January 1
 Martin Luther King Jr.'s Birthday – Third Monday in January
 Lincoln's Birthday – February 12
 President's Day – Third Monday in February
 Memorial Day - Last Monday in May
 Independence Day - July 4
 Labor Day - First Monday in September
 Veteran's Day - November 11
 Thanksgiving Day - Fourth Thursday in November
 Friday after Thanksgiving
 Christmas Eve – December 24
 Christmas Day - December 25

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

- EE. Notice of Award -- The written notice by the City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, the City will sign and deliver the Contract.
- FF. Notice of Completion -- The form which may be executed by the City and recorded by the county where the Project is located constituting final acceptance of the Project.
- GG. Notice to Proceed -- A written notice given by the City to Contractor fixing the date on which the Contractor may proceed with the Work and when Contract Times will commence to run.
- HH. Project -- The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
- II. Recyclable Waste Materials -- Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- JJ. Schedule of Submittals -- A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.
- KK. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- LL. Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
- MM. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.
- NN. Subcontractor -- An individual or entity other than a Contractor having a contract with any other entity than the City for performance of any portion of the Work at the Site.
- OO. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work.
- PP. Successful Bidder -- The Bidder submitting a responsive Bid to whom the City makes an award.
- QQ. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.

- RR. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- SS. Unit Price Work -- Work to be paid for on the basis of unit prices as provided by the Contractor in its bid or as adjusted in accordance with the Contract Documents.
- TT. Warranty -- A written guarantee provided to the City by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer.
- UU. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

- A. **Contract Documents.** The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.
- B. **Interpretations.** The Contract Documents are intended to be fully cooperative and complementary. If the Contractor observes that any documents are in conflict, the Contractor shall promptly notify the Engineer in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
1. Change Orders
 2. Contract
 3. Addenda
 4. Special Conditions
 5. Technical Specifications
 6. Plans (Contract Drawings)
 7. General Conditions
 8. Instructions to Bidders
 9. Notice Inviting Bids
 10. Contractor's Bid Forms
 11. City Standard Specifications
 12. City Standard Drawings
 13. Caltrans Standard Specifications, except Division 1
 14. Caltrans Standard Plans
 15. Reference Documents

With reference to the Drawings, the order of precedence shall be as follows:

1. Figures govern over scaled dimensions
 2. Detail drawings govern over general drawings
 3. Addenda or Change Order drawings govern over Contract Drawings
 4. Contract Drawings govern over Standard Drawings
 5. Contract Drawings govern over Shop Drawings
- C. **Conflicts in Contract Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality, and most expensive shall always apply.
- D. **Organization of Contract Documents.** Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Project Work among subcontractors or in establishing the extent of Work to be performed by any trade.

ARTICLE 3 PRECONSTRUCTION AND CONSTRUCTION COMMUNICATION

Before any Work at the site is started, a conference attended by the City, Contractor, City's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

At this conference the City and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

ARTICLE 4 CONTRACT DOCUMENTS: COPIES & MAINTENANCE

Contractor will be furnished, free of charge, **five (5)** copies of the Contract Documents. Additional copies may be obtained at cost of reproduction.

Contractor shall maintain a clean, undamaged set of Contract Documents, including submittals, at the Project site.

ARTICLE 5 EXAMINATION OF DRAWINGS, SPECIFICATIONS AND SITE OF WORK

- A. **Examination of Contract Documents.** Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of

correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.

- B. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- C. **Quality of Parts, Construction and Finish.** All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.
- D. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

ARTICLE 6 EXISTENCE OF UTILITIES AT THE WORK SITE

- A. The City has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans.
- B. Unless indicated otherwise on the Plans and Specifications, no excavations were made to verify the locations shown for underground utilities. The service connections to these utilities may not be shown on the Plans. Any connections shown on the Plans are general locations. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Contractor shall immediately notify the City in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.
- C. If applicable, all water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of the Work.
- D. Notwithstanding the above, pursuant to section 4215 of the Government Code, the City has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for Bids, the City shall assume the responsibility for their timely removal, relocation, or protection.

- E. Contractor, except in an emergency, shall contact the appropriate regional notification center (USA North), Northern California Underground Service Alert at 811 or 1-800-227-2600 or on-line at usanorth811.org at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the City, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the City has been given the identification number by the Contractor.

ARTICLE 7 SOILS INVESTIGATIONS

- A. Reports and Drawings. The Special Conditions identify:
1. those reports known to the City of explorations and tests of subsurface conditions at or contiguous to the site; and
 2. those drawings known to the City of physical conditions relating to existing surface or subsurface structures at the site (except Underground Facilities).
- B. Limited Reliance by Contractor on Technical Data Authorized. Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, which were expressly not created or obtained to evaluate or assist in the evaluation of constructability, and are not Contract Documents. Contractor shall make its own interpretation of the “technical data” and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such “technical data,” Contractor may not rely upon or make any claim against the City, City’s Representative, or Engineer of Record, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor’s purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, conclusions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

ARTICLE 8 CONTRACTOR’S SUPERVISION

Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the City. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

ARTICLE 9 WORKERS

- A. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.
- B. Any person in the employ of the Contractor whom the City may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

ARTICLE 10 INDEPENDENT CONTRACTORS

Contractor shall be an independent contractor for the City and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of City and are not entitled to benefits of any kind normally provided employees of City, including but not limited to, state unemployment compensation or workers' compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.

ARTICLE 11 SUBCONTRACTS

- A. Contractor agrees to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor's portion of the Work. Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the City.
- B. The City reserves the right to accept all subcontractors. The City's acceptance of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.
- C. Prior to substituting any subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

ARTICLE 12 VERIFICATION OF EMPLOYMENT ELIGIBILITY

By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the City to terminate the Contract for cause: (1) failure of the Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

ARTICLE 13 REQUESTS FOR SUBSTITUTION

- A. For the purposes of this provision, the term “substitution” shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.
- B. Pursuant to Public Contract Code section 3400(b), the City may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.
- C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words “or equal.” Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the City has adopted uniform standards for certain materials, processes, and articles.
- D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any “or equal” material, process, or article no later than 15 (15) calendar days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the City, the Contractor shall provide the material, method or service specified herein. The City shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.
- E. Substantiating data as described above shall include, at a minimum, the following information:
 - 1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.
 - 2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.
 - 3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.
 - 4. Information detailing the durability and lifecycle costs of the proposed substitution.

- F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.
- G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.
- H. The Contractor shall bear the costs of all City work associated with the review of substitution requests.
- I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

ARTICLE 14 SHOP DRAWINGS

- A. Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in its own Work or in that of any other contractor, subcontractor, or worker on the Project, six (6) copies of all shop drawings, calculations, schedules, and materials list, and all other provisions required by the Contract Documents. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Engineer. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the transmittal letter of the submittal.
- B. Contractor shall make any corrections required by the Engineer, and file with the Engineer six (6) corrected copies each, and furnish such other copies as may be needed for completion of the Work. Engineer's acceptance of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called Engineer's attention to such deviations at time of submission and has secured the Engineer's written acceptance. Engineer's acceptance of shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

ARTICLE 15 SUBMITTALS

- A. Contractor shall furnish to the Engineer for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the Contract Documents. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.
- B. Contractor will provide samples and submittals, together with catalogs and supporting data required by the Engineer, to the Engineer within a reasonable time period to provide for adequate review and avoid delays in the Work.

- C. These requirements shall not authorize any extension of time for performance of this Contract. Engineer will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

ARTICLE 16 MATERIALS

- A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- B. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.
- D. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the City free from any claims, liens, or charges.
- E. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the City or any independent contractor.
- F. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the City shall not be liable for Contractor's failure to do so. No additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Form, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.
- G. The City shall provide compensation for actual quantities of materials installed in accordance with the Contract Documents and at the price set forth in the Contractor's bid and/or executed change order. The City is not obligated to pay for materials stored on/off site but not yet installed in accordance with the Contract Documents.

ARTICLE 17 PERMITS AND LICENSES

- A. Contractor shall obtain all other necessary permits and licenses for the construction of the Project, including encroachment permits, and shall pay all fees required by law and shall comply with all laws, ordinances, rules and regulations relating to the Work and to the preservation of public health and safety. Before acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the City. Any construction permits required by City for performing any work on this project will be issued by City at no charge to Contractor. Contractor and all subcontractors shall maintain a City business license at all times they are performing the Work.

ARTICLE 18 TRENCHES

- A. **Trenches Five Feet or More in Depth.** Contractor shall submit to the Engineer at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer. Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.
- B. **Excavations Deeper than Four Feet.** If the Work involves excavating trenches or other excavations that extend deeper than four feet below the surface, Contractor shall promptly, and before the excavation is further disturbed, notify the City in writing of any of the following conditions:
1. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 2. Subsurface or latent physical conditions at the site differing from those indicated.
 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract

The City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a

decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 19 DIVERSION OF RECYCLABLE WASTE MATERIALS

In compliance with the applicable City's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances, and provide the City Engineer with detailed records and quantities of the materials that were sent to recycling centers. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by City or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

ARTICLE 20 REMOVAL OF HAZARDOUS MATERIALS

Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials which have not been rendered harmless at the Project site, the Contractor shall immediately stop work at the affected Project site and shall report the condition to the City in writing. The City shall contract for any services required to directly remove and/or abate PCBs and other toxic wastes and hazardous materials, if required by the Project site(s), and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of the City and Contractor.

ARTICLE 21 SANITARY FACILITIES

Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by Cal/OSHA shall be the responsibility of the Contractor.

ARTICLE 22 AIR POLLUTION CONTROL

Contractor shall comply with all air pollution and dust control rules, regulations, ordinances and statutes, including, but not limited to, those required by the Air Quality Management District. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

ARTICLE 23 LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out the Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense.

ARTICLE 24 TESTS AND INSPECTIONS

- A. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or Approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the City, Contractor shall promptly inform the City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for City testing and City inspection shall be paid by the City. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.
- B. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
- C. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the City, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- D. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the City so that the City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.
- E. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
- F. Reexamination of Work may be ordered by the City. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the City shall pay the costs of reexamination and

reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

ARTICLE 25 PROTECTION OF WORK AND PROPERTY

- A. The Contractor shall be responsible for all damages to persons or property that occurs as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by the City. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.
- B. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if so authorized or instructed by the Engineer or the City. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by the City and the Contractor.

ARTICLE 26 CONTRACTOR'S MEANS AND METHODS

Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

ARTICLE 27 AUTHORIZED REPRESENTATIVES

The City shall designate representatives, who shall have the right to be present at the Project site at all times. The City may designate an inspector who shall have the right to observe all of the Contractor's Work. The inspector shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

ARTICLE 28 HOURS OF WORK

- A. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon

compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

- B. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
- C. The Contractor shall pay to the City a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.
- D. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the City. Contractor shall also timely notify the City when work will be performed outside regular working hours or on weekends or holidays.
- E. City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to city/county ordinance.
- F. Refer to the most current version of the City of Milpitas Noise Abatement Ordinance, Ord. 196.6 of the Municipal Code Section V-213. It shall be unlawful for any person to engage or permit to engage in construction of any building or related road or walkway, pool, or landscape improvement or in the construction operations related thereto including to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:00 a.m. to 7:00 p.m., Monday through Sunday, unless otherwise approved by the City:
 - 1. Powered Vehicles
 - 2. Construction Equipment
 - 3. Loading and Unloading Vehicles
 - 4. Domestic Power Tools

ARTICLE 29 PAYROLL RECORDS; LABOR COMPLIANCE

- A. Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman,

apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.

- B. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- C. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.
- D. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the City. The Contractor shall also provide the following:
 - 1. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 2. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
- E. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
- F. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the contract shall not be marked or obliterated.
- G. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) calendar days in which to comply subsequent to

receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to the City for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

- H. The responsibility for compliance with this Article shall rest upon the Contractor.

ARTICLE 30 PREVAILING RATES OF WAGES

- A. The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the City's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.
- B. The Contractor shall forfeit as a penalty to the City not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.
- C. Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

ARTICLE 31 PUBLIC WORKS CONTRACTOR REGISTRATION

Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

ARTICLE 32 EMPLOYMENT OF APPRENTICES

- A. Contractor and all subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices.
- B. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- C. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.
- D. The responsibility for compliance with this Article shall rest upon the Contractor.

ARTICLE 33 NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

Employment Eligibility; Contractor. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Contract, and shall not violate any such law at any time during the term of the Contract. Contractor shall avoid any violation of any such law during the term of this

Contract by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for or referred to herein.

Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any part of the Work or of this Contract to make the same verifications and comply with all requirements and restrictions provided for herein.

Employment Eligibility; Failure to Comply. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Contract for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for herein; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

ARTICLE 34 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

ARTICLE 35 LABOR/EMPLOYMENT SAFETY

The Contractor shall comply with all applicable laws and regulations of the federal, state, and local government, including Cal/OSHA requirements and requirements for verification of employees' legal right to work in the United States.

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512.

The Contractor shall submit the Illness and Injury Prevention Program and a Project site specific safety program to the City prior to beginning Work at the Project site. Contractor shall maintain

a confined space program that meets or exceeds the City Standards. Contractor shall adhere to the City's lock out tag out program.

ARTICLE 36 INSURANCE

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required hereunder. Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause. Contractor shall furnish City with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the City. All certificates and endorsements must be received and approved by the City before Work commences.

- A. **Additional Insureds; Waiver of Subrogation.** The City, its elected and appointed officials, officers, attorneys, agents employees and volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. Contractor and its insurance carriers shall provide a Waiver of Subrogation in favor of those parties.
- B. **Workers' Compensation Insurance.** The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the City, if in the form and coverage as set forth in the Contract Documents.

- C. **Employer's Liability Insurance.** Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the City.
- D. **Commercial General Liability Insurance.** Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.
1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the City, and shall not preclude the City from taking such other actions available to the City under other provisions of the Contract Documents or law.
 2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
 3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.
 4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as

possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.
- E. **Automobile Liability Insurance.** Contractor shall provide “occurrence” form Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars (\$1,000,000) per accident for bodily injury and property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the City. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.
- F. **Builder’s Risk [“All Risk”]** [RESERVED]
- G. **Contractor’s Pollution Liability Coverage.** [RESERVED].
- H. Contractor shall require all tiers of sub-contractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by City. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor’s coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the City harmless from any damage, loss, cost, or expense, including attorneys’ fees, incurred by the City as a result thereof.

ARTICLE 37 FORM AND PROOF OF CARRIAGE OF INSURANCE

- A. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the City’s Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the City the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a “follow form” endorsement satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- B. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other

provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, officers, agents, employees, and volunteers.

- C. The Certificate(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the City prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the City may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the City has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.
- D. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- E. City reserves the right to adjust the monetary limits of insurance coverages during the term of this Contract including any extension thereof if, in the City's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.
- F. Contractor shall report to the City, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.

ARTICLE 38 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- A. **Time for Completion/Liquidated Damages.** Time is of the essence in the completion of the Work. Work shall be commenced within **ten (10) Days** of the date stated in the City's Notice to Proceed and shall be completed by Contractor specified in the Contract Documents. The City is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the City's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the City (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date. If the Work is not completed as stated in the Contract Documents, it is understood that the City will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to

determine the amount of actual damage, it is agreed that Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed as determined by the City. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

- B. **Inclement Weather.** Contractor shall abide by the Engineer's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule. The Contractor shall implement measures and make contingencies as may be required to protect the Work and to all allow Work to proceed during wet or inclement weather to prevent delay or stoppage.
- C. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) Days of identifying any such delay notify the City in writing of causes of delay. The City shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.
- D. **No Damages for Reasonable Delay.** The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay, including delays caused by items that are the responsibility of the City pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

ARTICLE 39 SCHEDULE OF VALUES, COST BREAKDOWN AND PERIODIC ESTIMATES

Contractor shall furnish on forms Approved by the City:

- A. When requested by the Engineer, and within ten (10) Days of Notice to Proceed with the Contract, the Contractor shall provide a Schedule of Values consisting of a detailed estimate giving a complete breakdown of the Contract price for each lump sum bid item in the Contract.
- B. A monthly itemized estimate of Work done for the purpose of making progress payments. In order for the City to consider and evaluate each progress payment application, the Contractor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the tenth (10th) Day of the following month.

- C. Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid Form.
- D. Following the City's Acceptance of the Work, the Contractor shall submit to the City a written statement of the final quantities of unit price items for inclusion in the final payment request.
- E. The City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

ARTICLE 40 PROGRESS ESTIMATES AND PAYMENT

- A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include any amount earned for authorized extra work. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the City has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the remainder a further deduction may be made in accordance with Section B below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.
- B. The Contractor shall provide an updated project schedule with each payment request.
- C. The City may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in his judgment may be necessary to cover:
 - 1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
 - 2. Defective work not remedied.
 - 3. Failure of Contractor to make proper payments to his subcontractor or for material or labor.
 - 4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.
 - 5. Damage to another contractor or a third party.

6. Amounts which may be due the City for claims against Contractor.
 7. Failure of Contractor to keep the record ("as-built") drawings up to date.
 8. Failure to provide update on construction schedule as required herein.
 9. Site cleanup.
 10. Failure to comply with Contract Documents.
 11. Liquidated damages.
 12. Legally permitted penalties.
- D. The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (B)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the City shall be deemed the agent of Contractor and any payment so made by the City shall be considered as a payment made under contract by the City to Contractor and the City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.
- E. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The City shall make the progress payment within 30 calendar days after the receipt of an undisputed and properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the City to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of days by which the Engineer exceeds the seven (7) Day requirement.
- F. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the City.

ARTICLE 41 SECURITIES FOR MONEY WITHHELD

Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the City to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the City to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

ARTICLE 42 CHANGES AND EXTRA WORK.

A. Contract Change Orders.

1. The City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Contract Price and Contract Time shall be adjusted accordingly. Except as otherwise provided herein, all such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract Price or the Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.
2. Contractor shall promptly execute changes in the Work as directed in writing by the City even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Contract Price or Contract Time. All claims for additional compensation shall be presented in writing. No claim will be considered after the Work in question has been completed unless a written Change Order has been issued or a timely written notice of claim has been made by Contractor.
3. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract.
4. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done.
5. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the work, including Additional Work, promptly and expeditiously.
6. Contractor shall make available to the City any of the Contractor's documents related to the Project immediately upon request of the City, as set forth in Article 52.
7. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

B. Contract Price Change.

1. Process for Determining Adjustments in Contract Price.
 - a. Owner Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract Price or

Contract Time, within seven (7) Days after receipt of a scope of a proposed change order initiated by the City, unless the City requests that proposals be submitted in less than seven (7) Days.

- b. Contractor Initiated Change. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.
- c. Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the City.
- d. Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by the City, including but not limited to estimates and quotations from subcontractors or material suppliers, as the City may reasonably request. Contractor shall certify the accuracy of all Change Order Requests under penalty of perjury.
- e. If the Contractor fails to submit a complete cost proposal within the seven (7) Day period (or as requested), the City has the right to order the Contractor in writing to commence the Work immediately on a time and materials basis and/or issue a lump sum change to the Contract Price and/or Contract Time in accordance with the City's estimate. If the change is issued based on the City's estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted work, the Contractor presents written proof that the City's estimate was in error.

2. Unit Price Change Orders.

- a. When the actual quantity of a Unit Price item is found to vary from the Bid Form, compensation for the change in quantity will be calculated by multiplying the actual quantity by the Unit Price. This calculation may result in either an additive or deductive Final Change Order pursuant to the Contract Documents. Contractor shall immediately inform the Engineer when the actual quantities vary from estimated quantities.
- b. No Mark up for Overhead and Profit. Because the Contract Unit Prices provided in the Bid Form include Overhead and Profit as determined by Contractor at the time of Bid submission, no mark up or deduction for Overhead and Profit will be included in Unit Price Change Orders.
- c. Bid items included on the Bid Form may be deducted from the Work in their entirety without any negotiated extra costs.
- d. Contractor acknowledges that unit quantities are estimates and agrees that the estimated unit quantities listed on the Bid Form will

be adjusted to reflect the actual unit quantities which may result in an adjustment to the Contract Unit Prices. Such an adjustment will be made by execution of a final additive or deductive Change Order following Contractor's completion of the Work. Upon notification, Contractor's failure to respond within seven (7) Days will result in City's issuance of a unit quantity adjustment to the Contract Unit Prices and/or Contract Time in accordance with the Contract Documents.

3. Lump Sum Change Orders. Compensation for Lump Sum Change Orders shall be limited to expenditures necessitated specifically by the Additional Work, and shall be segregated as follows:

- a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
- b. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight, and delivery. Materials costs shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then the City shall determine the materials cost, at its sole discretion.
- c. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of \$1,000 or less, shall be considered included in the Overhead and Profit mark-ups established below. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

4. Time and Materials Change Orders.

- a. General. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Contractor for labor, materials, and equipment in the proper performance of Additional Work. Except as otherwise may be agreed to in writing by the City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the following items.

- b. **Timely and Final Documentation.**
- i. **T&M Daily Sheets.** Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the City's Representative for an approval signature **each day** Additional Work is performed. Failure to get the City's Representative's approval signature each Day shall result in a waiver of Contractor's right to claim these costs. The City's Representative's signature on time sheets only serves as verification that the Work was performed and is not indicative of City's agreement to Contractor's entitlement to the cost.
 - ii. **T&M Daily Summary Sheets.** All documentation of incurred costs ("T&M Daily Summary Sheets") shall be submitted by Contractor within **three (3) Days** of incurring the cost for labor, material, equipment, and special services as Additional Work is performed. Contractor's actual costs shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Each T&M Daily Summary Sheet shall include Contractor's actual costs incurred for the Additional Work performed that day and a cumulative total of Contractor's actual costs incurred for the Additional Work. Contractor's failure to provide a T&M Daily Summary Sheet showing a total cost summary within three (3) Days but within five (5) Days of performance of the Work will result in the Contractor's otherwise allowable overhead and profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Contractor's failure to submit the T&M Daily Summary Sheet within five (5) Days of performance of the Work will result in a total waiver of Contractor's right to claim these costs.
 - iii. **T&M Total Cost Summary Sheet.** Contractor shall submit a T&M Total Cost Summary Sheet, which shall include total actual costs, within **seven (7) Days** following completion of City approved Additional Work. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Contractor's failure to submit the T&M Total Cost Summary Sheet within seven (7) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the T&M Summary Sheets or the performance of the Additional Work.
- c. **Labor.** The Contractor will be paid the cost of labor for the workers used in the actual and direct performance of the Work.

The cost of labor will be the sum of the actual wages paid (which shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes) substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Additional Work at the time the Additional Work is done, and the labor surcharge set forth in the Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract. The labor surcharge shall constitute full compensation for all payments imposed by Federal, State, or local laws and for all other payments made to, or on behalf of, the workers, other than actual wages.

- i. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.
 - ii. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including, without limitation, the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.
- d. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Project site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.
- i. Trade discounts available to the purchaser shall be credited to the City notwithstanding the fact that such discounts may not have been taken by Contractor.
 - ii. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the City's Representative.
 - iii. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Project site, whichever price is lower.
 - iv. If, in the opinion of the City's Representative, the cost of materials is excessive, or Contractor does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current

wholesale price for the total quantity concerned delivered to the Project site less trade discounts.

- v. The City reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Contractor for costs of such materials or Indirect Costs or profit on City furnished materials.

e. Equipment.

- i. Rental Time. The rental time to be paid for equipment on the Project site shall be the time the equipment is in productive operation on the Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except that moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.

- (a) Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

- (b) Computation Method. The following shall be used in computing the rental time of equipment on the Project site.

- (i) When hourly rates are paid, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.
- (ii) When daily rates are paid, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation, and any part of an hour in excess of 4 hours will be considered one day of operation.

- ii. Rental Rates. Contractor will be paid for the use of equipment at the lesser of (i) the actual rental rate, or (ii) the rental rate listed for that equipment in the California Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Contract was executed. Such rental rates will be used to compute payments for equipment whether the equipment is under Contractor's

control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate (i.e., daily, monthly) resulting in the least total cost to the City for the total period of use. If it is deemed necessary by Contractor to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by the City's Representative. Contractor may furnish cost data which might assist the City's Representative in the establishment of the rental rate.

iii. Contractor-Owned Equipment.

- (a) For Contractor-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month.
- (b) For Contractor-owned equipment, the rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation, unless, in the instance of standby time, the equipment could be actively used by Contractor on another project, then City shall pay for the entirety of the time the equipment is on Site. It shall be Contractor's burden to demonstrate to the City that the equipment could be actively used on another project.
 - (i) All equipment shall, in the opinion of the City's Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.
 - (ii) Before construction equipment is used on the Additional Work, Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the City's Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Additional Work activities planned.
 - (iii) Unless otherwise specified, manufacturer's rating and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered

by a unit of at least the minimum rating recommended by the manufacturer.

- f. Special Services. Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.
 - i. Invoices for Special Services. When the City's Representative and Contractor determine that a special service is required which cannot be performed by the forces of Contractor or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by the City's Representative.
 - ii. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit specified herein, a total allowance not to exceed fifteen percent (15%) for Overhead and Profit will be added to invoices for Special Services.
 - iii. When the City determines, in its sole discretion, that competitive bidding is necessary for certain special services, Contractor shall solicit competitive bids for those special services.
- g. Excluded Costs. The term Time and Material shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Contractor's allowance for Overhead and Profit.
 - i. Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Additional Work;
 - ii. Office Expenses. Expenses of Contractor's principal and branch offices;
 - iii. Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital

employed for the Additional Work and charges against Contractor for delinquent payments;

- iv. Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
 - v. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents;
 - vi. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of Contractor;
 - vii. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
 - viii. Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;
 - ix. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;
 - x. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.
- h. Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:
- i. "Net Cost" is defined as consisting of costs of labor, materials, and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up. Contractor shall provide City with documentation of the costs, including, but not limited to, payroll records,

invoices, and such other information as City may reasonably request.

- ii. For Work performed by the Contractor's forces, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Net Cost of the Work.
 - iii. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the subcontractor's Net Cost of the Work to which the Contractor may add five percent (5%) of the subcontractor's Net Cost.
 - iv. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the subcontractor and general contractor may each add an additional five percent (5%) of the Net Cost of the lower tier subcontractor.
 - v. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by City exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.
5. All of the following costs are included in the markups for overhead and profit described above, and Contractor shall not receive any additional compensation for: Submittals, drawings, field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary On-Site facilities (Offices, Telephones, High Speed Internet Access, Plumbing, Electrical Power, Lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final Cleanup; Other Incidental Work; Related Warranties; insurance and bond premiums.
6. For added or deducted Work by subcontractors, the Contractor shall furnish to the City the subcontractor's signed detailed record of the cost of labor, material and equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors

7. For added or deducted work furnished by a vendor or supplier, the Contractor shall furnish to the City a detailed record of the cost to the Contractor, signed by such vendor or supplier.
8. Any change in the Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an increase in the Contract Price; overhead and profit allowances shall not be applied if the net total cost is a deduction to the Contract Price. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.
9. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order for Work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the City's change order form in an attempt to reserve additional rights.
10. If the City disagrees with the proposal submitted by Contractor, it will notify the Contractor and the City will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with the City, a Change Order will be issued by the City. If no agreement can be reached, the City shall have the right to issue a unilateral Change Order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to the City within fifteen (15) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order, and providing such supporting documentation for its position as the City may require.

C. Change of Contract Times.

1. The Contract Times may only be changed by a Change Order.
2. All changes in the Contract Price and/or adjustments to the Contract Times related to each change shall be included in Contractor's COR pursuant to this Article. No cost or time will be allowed for cumulative effects of multiple changes. All Change Orders must state that the Contract Time is not changed or is either increased or decreased by a specific number of days. Failure to include a change to time shall waive any change to the time unless the parties mutually agree in writing to postpone a determination of the change to time resulting from the Change Order.
3. Notice of the amount of the request for adjustment in the Contract Times with supporting data shall be delivered within seven (7) Days after such start of occurrence, unless City's Representative allows an additional period of time to ascertain more accurate data in support of the request.

No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed.

4. City may elect, at City's sole discretion, to grant an extension in Contract Times, without Contractor's request, because of delays or other factors.
5. Use of Float and Critical Path.
 - a. Float is for the benefit of the Project. Float shall not be considered for the exclusive use or benefit of either the City or the Contractor.
 - b. Contractor shall not be entitled to compensation, and City will not compensate Contractor, for delays which impact early completion. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float.
6. Contractor's entitlement to an extension of the Contract Times is limited to a City-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the City-caused delay extends the critical path beyond the previously approved Contract Time. If approved, the increase in time required to complete the Work shall be added to the Contract Time.
 - a. Contractor shall not be entitled to an adjustment in the Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
 - b. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions (as determined by the City), Acts of God, acts or failures to act of utility owners not under the control of City, or other causes not the fault of and beyond control of City and Contractor, then Contractor shall be entitled to an time extension when the Work stopped is on the critical path. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays. Contractor must submit a timely request in accordance with the requirements of this Article.
 - c. Utility-Related Delays.
 - i. Contractor shall immediately notify in writing the utility owner and City's Representative of its construction schedule and any subsequent changes in the construction schedule which will affect the time available for protection, removal, or relocation of utilities. Requests for extensions

of time arising out of utility relocation or repair delays shall be filed in accordance with this Article.

- ii. Contractor shall not be entitled to damages or additional payment for delays attributable to utility relocations or alterations if correctly located, as noted in the Contract Documents or by the Underground Service Alert survey.

7. Content for Requests for Contract Extension. Contractor's justification for entitlement shall be clear and complete citing specific Contract Document references and reasons on which Contractor's entitlement is based. At a minimum, each request for a time extension must include:

- a. Each request for an extension of Contract Time must identify the impacting event, in narrative form, providing a description of the delay event and sufficient justification as to why the Contractor is entitled to a time extension. Contractor must demonstrate that the delay arises from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and any Subcontractors or Suppliers, or any other persons or organizations employed by any of them or for whose acts any of them may be liable, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Times, despite Contractor's reasonable and diligent actions to guard against those effects.
- b. Each request for an extension of Contract Time must include a time impact analysis in CPM format, using the Contemporaneous Impacted As-Planned Schedule Analysis to calculate the impact of the delay event.

8. No Damages for Reasonable Delay.

- a. City's liability to Contractor for delays for which City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.
- b. City and City's Representative, and the officers, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

9. Contractor's failure, neglect, or refusal to comply with the requirements of the Contract Documents, or any portion thereof, shall bar Contractor's request for extensions of the Contract Times. Such failure, neglect, or refusal prejudices City's and City's Representative's ability to recognize and mitigate delay, and such failure, neglect, or refusal prevent the timely analysis of requests for extensions of Contract Times, and whether such extensions may be warranted. Contractor hereby waives all rights to extensions of Contract Times due to delays or accelerations that result from or occur during periods of time for which Contractor fails, neglects, or refuses to fully comply with the requirements of this Article.
10. Contractor's submission of daily construction reports and schedule updates in accordance with these Contract Documents is required for the evaluation of the merits of time extension request. Failure of the Contractor to submit daily construction reports and schedule updates shall constitute a waiver of its right to seek a time extension or additional compensation.

ARTICLE 43 FINAL ACCEPTANCE AND PAYMENT

- A. Final Inspection. Upon written notice from Contractor that the entire Work is complete, the Engineer will promptly make a final inspection and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. Final Acceptance. After Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as-builts), and other documents required by the Contract Documents, the City shall execute and file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.
- C. Final Payment.
 1. Application for Payment. Upon execution of the Notice of Completion, Contractor may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied (except as previously delivered) by: all documentation called for in the Contract Documents, including but not limited to a fully completed Conditional Waiver and Release on Final Payment
 2. City's Review of Application and Acceptance. If, on the basis of the City's observation of the Work during construction and final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the City is satisfied that the Work has been completed and Contractor has satisfied all other requirements for final payment, the City will process the final

payment application. Otherwise, the City will return the payment application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the application for payment.

3. Payment Becomes Due. Within sixty (60) Days after the presentation to the City of the proper and complete final application for payment and accompanying documentation, the amount recommended by the Engineer, less any sum the City is entitled to set off pursuant to the Contract Documents, will become due and will be paid by the City to Contractor.

- D. Waiver of Claims. The making and acceptance of final payment will constitute a waiver of all Claims by Contractor against the City other than those previously made in accordance with the requirements herein and expressly acknowledged by the City in writing as still unsettled.

ARTICLE 44 OCCUPANCY

The City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

ARTICLE 45 INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the City's choosing), indemnify and hold harmless the City, officials, officers, agents, employees, and representatives, and each of them from and against:

- A. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City or its officials, officers, employees, or authorized volunteers.
- B. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.

- C. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;
- D. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under the agreement. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the City Council's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

ARTICLE 46 PROCEDURE FOR RESOLVING DISPUTES

Contractor shall timely comply with all notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Article 42, Changes and Extra Work, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

- A. **Intent.** Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.
- B. **Claims.** For purposes of this Article, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with Article 42 "Changes and Extra Work" has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. Claims governed by this Article may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the procedures contained in Article 42, Changes and Extra Work, and Contractor's request for a change has been denied in whole or in part. Claims

governed by this Article must be filed no later than the date of final payment. The claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

C. Supporting Documentation. The Contractor shall submit all claims in the following format:

1. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made
2. List of documents relating to claim:
 - Specifications
 - Drawings
 - Clarifications (Requests for Information)
 - Schedules
 - Other
3. Chronology of events and correspondence
4. Analysis of claim merit
5. Analysis of claim cost
6. Time Impact Analysis in CPM format

D. City's Response. Upon receipt of a claim pursuant to this Article, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the City issues its written statement.

1. If the City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the

Contractor a written statement identifying the disputed portion and the undisputed portion.

2. Within 30 Days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor. The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
- E. **Meet and Confer.** If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.
- F. **Mediation.** Within 10 business Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.
1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
 2. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
 3. Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.
- G. Procedures After Mediation.** If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.
- H. Civil Actions.** The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
 2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
- I. Government Code Claims.** In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. **A Government Code claim must be filed no earlier than the date the Work is**

completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

- J. **Non-Waiver.** The City's failure to respond to a claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety.

ARTICLE 47 CITY'S RIGHT TO TERMINATE CONTRACT

A. Termination for Cause by the City:

1. In the sole estimation of the City, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the City may serve written notice upon the Contractor and its Surety of the City's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) calendar days unless such violations have ceased and arrangements satisfactory to the City have been made for correction of said violations.
2. In the event that the City serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform the Contract. If the Surety does not: (1) give the City written notice of Surety's intention to take over and commence performance of the Contract within 15 calendar days of the City's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of the Contract within 30 calendar days of the City's service of said notice upon Surety; then the City may take over the Work and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.
3. In the event that the City elects to obtain an alternative performance of the Contract as specified above: (1) the City may, without liability for so doing, take possession of and utilize in completion of the Work such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion (A special lien to secure the claims of the City in the event of such suspension is hereby created against any property of Contractor taken into the possession of the City under the terms hereof and such lien may be enforced by sale of such property under the direction of the City Council without notice to Contractor. The proceeds of the sale after

deducting all expenses thereof and connected therewith shall be credited to Contractor. If the net credits shall be in excess of the claims of the City against Contractor, the balance will be paid to Contractor or Contractor's legal representatives.); and (2) Surety shall be liable to the City for any cost or other damage to the City necessitated by the City securing an alternate performance pursuant to this Article.

B. Termination for Convenience by the City:

1. The City may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, if the City determines that a termination is in the City's interest.
2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the City, the extent of termination, and the Effective Date of such termination.
3. After receipt of Notice of Termination, and except as directed by the City's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - a. Stop Work as specified in the Notice.
 - b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
 - f. Submit to the City's Representative, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the City's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 calendar days after the Effective Date of the Notice

of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the City's Termination for Convenience."

4. Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed.
5. In the event that the City exercises its right to terminate this Contract pursuant to this clause, the City shall pay the Contractor, upon the Contractor's submission of the documentation required by this clause and other applicable provisions of the Contract Documents, the following amounts:
 - a. All actual reimbursable costs incurred according to the provisions of this Contract.
 - b. A reasonable allowance for profit on the cost of the Work performed, provided Contractor establishes to the satisfaction of the City's Representative that it is reasonably probable that Contractor would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed fifteen (15%) percent of the costs.
 - c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Contract under this Article.
- C. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the City may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the City or the Contract is terminated.

ARTICLE 48 WARRANTY AND GUARANTEE OF WORK

- A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor hereby agrees to repair or replace, at the discretion of the City, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year from the date of the Notice of Completion of the Project without any expense whatever to the City, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.

- B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) calendar days after being notified in writing of required repairs, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder immediately upon demand.
- C. In addition to the warranty set forth in this Article, Contractor shall obtain for City all warranties that would be given in normal commercial practice and assign to City any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the City with all warranty and guarantee documents prior to final Acceptance of the Project by the City as required.
- D. When specifically indicated in the Contract Documents or when directed by the Engineer, the City may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the City for installation by the Contractor to be voided or reduced, Contractor shall indemnify City from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the City for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.
- E. The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.
- F. The City shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) calendar days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; the City shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.
- G. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the City may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.
- H. Acceptance of Defective Work.

1. If, instead of requiring correction or removal and replacement of Defective Work, the City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.
2. If any acceptance of defective work occurs prior to release of the Project Retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by City.
3. If the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to City.
4. If the acceptance of Defective Work occurs after release of the Project Retention, an appropriate amount will be paid by Contractor to City.

I. City May Correct Defective Work.

1. If Contractor fails within a reasonable time after written notice from City's Representative to correct Defective Work, or to remove and replace rejected Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, City may, after seven (7) Days' written notice to Contractor, correct, or remedy any such deficiency.
2. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City and City's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable City to exercise the rights and remedies to correct the Defective Work.
3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by City correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the Contract Price.

4. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Defective Work.
 5. If the Change Order is executed after all payments under the Contract have been paid by City and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to City.
 6. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Contractor to City.
 7. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to City correcting Defective work.
- J. Nothing in the Warranty or in the Contract Documents shall be construed to limit the rights and remedies available to City at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 49 DOCUMENT RETENTION & EXAMINATION

- A. In accordance with Government Code section 8546.7, records of both the City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
- B. Contractor shall make available to the City any of the Contractor's other documents related to the Project immediately upon request of the City.
- C. In addition to the State Auditor rights above, the City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the City, for a period of four (4) years after final payment.

ARTICLE 50 SEPARATE CONTRACTS

- A. The City reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.
- B. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.
- C. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the City in

prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

ARTICLE 51 NOTICE AND SERVICE THEREOF

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Bid Forms. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to City shall be addressed to the City as designated in the Notice Inviting Bids unless City designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) calendar days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

ARTICLE 52 NOTICE OF THIRD PARTY CLAIMS

Pursuant to Public Contract Code section 9201, the City shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The City is entitled to recover reasonable costs incurred in providing such notification.

ARTICLE 53 STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

ARTICLE 54 INTEGRATION

- A. **Oral Modifications Ineffective.** No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.
- B. **Contract Documents Represent Entire Contract.** The Contract Documents represent the entire agreement of the City and Contractor.

ARTICLE 55 ASSIGNMENT OF CONTRACT

Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the City. Any assignment or change of Contractor's name or legal entity without the written consent of the City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

ARTICLE 56 CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect City's rights under the Contract, including but not limited to the bonds.

ARTICLE 57 ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Public Contract Code section 7103.5, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC, Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this contract or any subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties.

ARTICLE 58 PROHIBITED INTERESTS

No City official or representative who is authorized in such capacity and on behalf of the City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

ARTICLE 59 CONTROLLING LAW

Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

ARTICLE 60 JURISDICTION; VENUE

Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of Santa Clara County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

ARTICLE 61 LAWS AND REGULATIONS

- A. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, it shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

ARTICLE 62 PATENTS

Contractor shall hold and save the City, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this contract.

ARTICLE 63 OWNERSHIP OF CONTRACT DOCUMENTS

All Contract Documents furnished by the City are City property. They are not to be used by Contractor or any subcontractor on other work nor shall Contractor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to the City on request at completion of the Work.

ARTICLE 64 NOTICE OF TAXABLE POSSESSORY INTEREST

In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

ARTICLE 65 SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

00 73 13 – SPECIAL CONDITIONS

1.1 Engineer of Record.

- A For purposes of this Project, the Engineer of Record or Engineer shall be: Tony Ndah, PE, Director of Public Works

1.2 Location of the Project.

- A The Project is located: At various locations throughout the City.
- B The general location of the Project is shown on City Drawing No. [NOT APPLICABLE]

1.3 Status of the Project Area and Rights-of-Way.

- A City, at its expense, will provide all rights-of-way or permits, or both, covering the crossing of private property and public and private rights-of-way necessary for the permanent Work; provided, however, Contractor shall, at its expense, obtain any bonds or insurance policies or pay any fees and enter into any agreements required by a controlling authority, e.g., Caltrans or Southern Pacific Railroad Company, before Contractor enters upon any property or right-of-way under the jurisdiction of any such controlling authority for the purpose of performing Work.
- B City has acquired or is negotiating to acquire any rights-of-way, or both, necessary for the permanent Work.
- C If such permits are required, all operations of Contractor shall conform to the restrictions, regulations, and requirements set forth in said permits, copies of which will be included in the Contract Documents.
- D Contractor may be required, as a condition for receiving final payment, to obtain, and provide City's Representative with copies of, executed damage releases from the owners of public and private property whose property has been damaged by the Work. The damage releases will be on a form provided by City.
- E Contractor shall, also, as a condition for receiving final payment, obtain, and provide City's Representative with copies of, executed damage releases from the owners of certain public and private property or areas which have been crossed by the Work or otherwise affected by the Work. The damage releases will be on a form provided by City.

1.4 Site Data.

- A The data provided herein is for the information of Contractor and is subject to all limitations and conditions set forth in the Contract Documents.
- B Subsurface Exploration Data. [RESERVED]

C Other Site Data. The following data are available for inspection at City's office:

1. Department of Public Work

1.5 Pre-Purchased or Pre-Negotiated Material.

[NOT USED.]

1.6 Designation of City's Representative.

A Unless otherwise modified by City, City's Representative shall be Joseph Aguilera, Public Works Manager.

1.7 Project Retention

In accordance with Public Contract Code § 7201, City will withhold 5% of each progress payment as retention on the Project.

1.8 Liquidated Damages Due to Contractor Delay.

A Time is of the essence. Should Contractor fail to complete all or any part of the Work within the time specified in the Contract Documents, City will suffer damage, the amount of which is difficult, if not impossible, to ascertain and, pursuant to the authority of Government Code section 53069.85, City shall therefore be entitled to **\$100.00** per Day as liquidated damages for each Day or part thereof that actual completion extends beyond the time specified.

B Liquidated damages may be deducted from progress payments due to Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent City, in case of Contractor's default, from terminating the Contractor.

1.9 Utility Outages – Notices to Residents.

A Should Contractor's operations require interruption of any utility service, Contractor shall notify City at least ten (10) Days prior to the scheduled outage. Contractor will notify all impacted residents on a form provided by City at least seven (7) Days prior to the scheduled outage.

B Contractor shall be responsible for providing, at its cost, any temporary utility or facilities necessitated by the utility outage.

1.10 Schedule Constraints.

NOT USED.

A City has considered these Schedule Constraints when determining the Contract Times and no additional time or compensation will be added to the Contract due to these Constraints.

1.11 Safety Programs.

[NOT USED.

1.12 Coordination with Other Contractors.

[NOT USED]

END OF SPECIAL CONDITIONS

01 00 00 – GENERAL REQUIREMENTS

PART 1 GENERAL

1.1 DESCRIPTION

- A. Sidewalk, gutter, and curb repair and replacement at various locations throughout the City of Milpitas.

1.2 RELATED REQUIREMENTS SPECIFIED ELSEWHERE

- A. [RESERVED]

PART 2 (NOT USED)

PART 3 EXECUTION

3.1 LAYOUT OF WORK AND QUANTITY SURVEYS

- A. General. The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed.

City and/or the Engineer of Record has established primary control to be used by the Contractor for establishing lines and grades required for the Work.

Primary control consists of benchmarks and horizontal control points in the vicinity of the Work. A listing and identification of the primary control is provided on the Drawings. Before beginning any layout work or construction activity, the Contractor shall check and verify primary control, and shall advise the City Representative of any discrepancies.

- B. Quantity surveys. The Contractor shall perform such surveys and computations as are necessary to determine quantities of Work performed or placed during each progress payment period, and shall perform all surveys necessary for the City Representative to determine final quantities of Work in place. The City Representative will determine final quantities based upon the survey data provided by the Contractor, and the design lines and grades. If requested by the City Representative, the Contractor shall provide an electronic copy of data used for quantity computations.

All surveys performed for measurement of final quantities of Work and material shall be subject to approval of City's Representative. Unless waived by City's Representative in each specific case, quantity surveys made by the Contractor shall be made in the presence of City's Representative.

- C. Surveying

- 1. Accuracy. Degree of accuracy shall be an order high enough to satisfy tolerances specified for the Work and the following:

- (a) Right-of-way and alignment of tangents and curves shall be within 0.1 foot.
 - (b) Structure points shall be set within 0.01 foot, except where operational function of the special features or installation of metalwork and equipment require closer tolerances. When formwork has been placed and is ready for concrete, the Contractor shall check the formwork for conformance with the drawings and to ensure that the forms are sufficiently within the tolerance limits for the completed work.
 - (c) Cross-section points shall be located within 0.1 foot, horizontally and vertically.
 - (d) Aerial Mapping shall meet National Mapping Standards for 2-foot contour intervals.
- D. Records. Survey data shall be recorded in accordance with recognized professional surveying standards. Original field notes, computations, and other surveying data shall be recorded on electronic data collectors or in standard field books and must be of sufficient quality to enable the Contractor to prepare accurate record drawings as required by the Contract Documents.
- E. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required for surveys for the layout of work and quantity surveys shall be included in the Schedule of Pay Items for items of work requiring the surveys. No additional compensation shall be made to the Contractor for this Work.

3.2 SCHEDULE

- A. Estimated Schedule. Within 21 Days after the issuance of the Notice of Award, Contractor shall prepare a Project schedule and shall submit this to the Engineer for Approval. The receipt or Approval of any schedules by the Engineer or the City shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the Engineer.
- B. Schedule Contents. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the

time specified for completion. The overall Project Schedule duration shall be within the Contract time.

- C. Weather Allowance. The schedule shall allow adequate time for inclement weather.
- D. Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the Engineer monthly when requested to do so by Engineer. Contractor shall also submit schedules showing a three week detailed look-ahead at bi-weekly meetings conducted with the City. The Engineer may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

3.3 TEMPORARY FIELD OFFICE

[NOT USED]

3.4 PROTECTION OF WORK AND PROPERTY

- A. All traffic detector loops, fences, walls, culverts, monuments, or other obstructions (except property line monuments within five (5) feet of the centerline of the mains) which are removed, damaged, or destroyed in the course of the Work, shall be replaced or repaired to the original condition at no additional cost to City. Contractor shall be responsible for the cost to repair, replace, relocate, and replacement of utilities whether or not those obstructions have been shown on the Plans, unless otherwise stated herein. It is then the Contractor's responsibility to employ at its expense a Licensed Land Surveyor to restore all property line monuments located more than five (5) feet from the centerline of the mains, which are destroyed or obliterated. Property line monuments located within five (5) feet of the centerline of the mains will be replaced by the City at no expense to the Contractor, provided the City is notified at least 48 hours before the property line monuments are damaged.
- B. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.
- C. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:
 - 1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
 - 2. Provide substantial barricades around any shrubs or trees indicated to be preserved.

3. Deliver materials to the Project site over a route designated by the Engineer.
 4. Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If the Contractor does not comply, the City shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.
 5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the Engineer. Contractor shall not unreasonably encumber the Project site with its materials.
 6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the City, at no cost to the City.
 7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the City.
 8. Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.
 9. At the completion of work each day, leave the Project site in a clean, safe condition.
 10. Comply with any approved stage construction and traffic control plans. Access to residences and businesses shall be maintained at all times, unless otherwise permitted in writing by the City.
 11. Cover and or protect work and project site as may be required to prevent or mitigate schedule delay and to allow work to proceed during wet weather or wet conditions.
- D. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the Work involved in the preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefore.
- E. Should damage to persons or property occur as a result of the Work, Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The City shall be entitled to inspect and copy any such documentation, video, or photographs.

3.5 SITE CONDITIONS SURVEYS

A. Work Included.

Contractor shall conduct thorough pre-construction and post-construction site condition surveys of the entire project area. Site Conditions surveys shall include written documentation of the conditions found, as well as photographs and video recordings of the area within at least 80 feet of any construction area and staging area. The written notes, photographs, and video shall be suitable for forensic purposes to resolve any damage claims that may arise as a result of construction.

B. Submittals.

1. Written documentation of site condition survey at pre-construction and post-construction.
2. Photographs as described herein of pre-construction and post-construction conditions.
3. Video recordings as described herein of pre-construction and post-construction conditions.
4. Submittals shall be made within three days of the surveys. All post-construction data shall be submitted prior to the final project inspection.

C. Site Condition Written Documentation.

Written documentation shall include the time, date, and conditions under which the site survey was made. The documentation shall note the condition of structures, pavement, sidewalks, utilities, fences, and etc. within the work areas.

D. Photographs & Video Recording.

1. General – Prior to starting Work, Contractor shall provide a video recording of the project site. Contractor shall take enough photographs during each site survey to provide a record of conditions existing prior to construction and conditions after construction. Pre-construction video and photographs shall be taken prior to any construction or mobilization of equipment, but not more than one week prior to actual start of work. The pre-construction photographs may be staged at different times to match the progression of the Work.
2. The photographs shall document existing damage to public and private facilities, both prior to and after construction. Conditions to be documented include, but are not limited to: sidewalk cracks, broken curbs, separated property walls, improvements within public right-of-ways, access roads used, utility covers and markings, signs, pavement striping, pavement, unique or unusual conditions, adjacent driveways, landscaping, survey markers, and any feature directed by the Engineer. Private property that is adjacent to the public right-of-way shall be documented to the extent visible from the public right-of-way.

3. Photographs shall include items to indicate scale, as needed. In particular, scales or other items shall be laid next to close ups of structural cracks and other damaged areas being recorded. Scaling shall also be used to document elevation differences, as needed.
4. One set of color prints and the preconstruction site video shall be submitted. Additional sets shall be available for reviewing in settling any construction disputes. A set of photos shall also be furnished in electronic format. The resolution shall be at least equal to 7 mega-pixels. All photos shall be documented as to time and date taken, photographer, project number, location, and orientation. Documentation shall include a brief description of objects photographed.

E. Video Recording.

1. Video recordings shall document the conditions of the entire area affected by construction, as well as nearby structures and facilities. The general documentation requirements for videos are the same as for photographs. Video recorders shall accurately and continuously record the time and date.
2. Video recordings shall include an audio portion made simultaneously during the videoing. The audio recording shall describe the location, time, orientation, and objects being recorded. Special commentary shall be provided for unusual conditions or damage noted.
3. Video equipment shall be capable of producing high resolution images and shall have zoom capabilities.
4. Video recordings shall provide an overall picture of the sites and shall provide detailed images of damaged areas. Video shall extend to the maximum height of structures.
5. The Engineer shall have the right to reject any audio video recordings submitted with unintelligible audio, uncontrolled pan or zoom, or of poor quality. Video recordings shall be repeated when rejected.
6. Video recordings shall be submitted with labels indicating the project, date, recorder, and other pertinent information. Recordings shall be submitted on standard DVDs in a standard format.

F. Timing.

Contractor shall provide written notice of the time scheduled for the site conditions survey and the place it is to begin. Contractor shall obtain the Engineer's concurrence prior to beginning the condition survey. The Engineer reserves the right to cancel the survey due to weather conditions or other problems. Videoing shall be done during times of good visibility and no videoing or photography shall be done during periods of visible precipitation or when standing water obscures pavement. Contractor shall provide the Engineer with

an opportunity to have a representative present when taking the photos and provide guidance during photographing.

G. Site Surveyor.

The site condition surveyor(s) shall be experienced in construction and potential damage concerns. The site condition surveyor(s) shall be familiar with the photography and video equipment being used.

H. Field Quality Control.

Prior to submitting videos and photographs, the Contractor shall spot check the photos and videos in the field to insure they accurately reflect the actual conditions and to insure they are correctly labeled.

I. Soils Compaction Testing.

1. All soils compaction testing will be done by a licensed geotechnical engineer furnished by the City. Soils compaction testing will be done for all footings and foundations prior to placement of rebar or concrete.
2. For pipeline construction, soil compaction testing will be done at 100-foot intervals or as ordered by the project soils/geotechnical report at the bottom of the trench prior to placement of pipe bedding; at the top of the pipe bedding above the pipe; every two vertical feet of trench backfill or as otherwise ordered by the project soils/geotechnical report; at the top of the trench backfill, which could be the bottom of the pavement section; and at the top of the aggregate base prior to pavement construction.

3.6 SUBMITTAL REQUIREMENTS FOR MANUALS AND RECORD DRAWINGS

A. General. The Contractor shall furnish all materials and perform all Work required for furnishing submittals to City in accordance with Contract Documents. The Contractor shall submit Project Record Drawings, Technical Manual, Spare Parts, and other required items within 5 days following completion of project construction, and prior to Contractor's request for Project Acceptance.

B. Technical Manuals.

1. The Contractor shall submit technical operation and maintenance information for each item of mechanical, electrical and instrumentation equipment in an organized manner in the Technical Manual. It shall be written so that it can be used and understood by City's operation and maintenance staff.
2. The Technical Manual shall be subdivided first by specification section number; second, by equipment item; and last, by "Category." The Contractor shall furnish to City four (4) identical Technical Manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard binder.

- C. Spare Parts List - The Contractor shall furnish to City six (6) identical sets of spare parts information for all mechanical, electrical, and instrumentation equipment. The spare parts list shall include the current list price of each spare part. The spare parts list shall include those spare parts which each manufacturer recommends be maintained by City in inventory. Each manufacturer or supplier shall indicate the name, address, and telephone number of its nearest outlet of spare parts to assist City in ordering. The Contractor shall cross-reference all spare parts lists to the equipment numbers designated in the Contract Documents. The spare parts lists shall be bound in standard size, 3-ring binder.
- D. Record Drawings
1. The Contractor shall maintain one record set of Drawings at the Site. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Contract Drawings. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.
 2. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations.
 3. Record drawings shall be accessible to City's Representative at all times during the construction period. The record drawings shall be kept up to date and will be checked by the City prior to each progress payment. Failure on the Contractor's part to keep record drawings current could result in withholding partial payment.
 4. Upon Completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to City's Representative. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.
- E. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Manuals and Record Drawings shall be included in Contractor's bid and distributed in the Schedule of Pay. No additional compensation shall be made to the Contractor for this Work.

3.7 MATERIALS

A. Materials to be Furnished by the Contractor

1. Inspection of Materials. Materials furnished by the Contractor which will become a part of the Project shall be subject to inspection at any one or more of the following locations, as determined by City's Representative: at the place of production or manufacture, at the shipping point, or at the site of the Work. To allow sufficient time to provide for inspection, the Contractor shall submit to City's Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the materials, including drawings and other pertinent information, covering materials on which inspection will be made.
2. No later than fourteen (14) Days prior to manufacture of material, Contractor shall inform City's Representative, in writing, the date the material is to be manufactured.
3. Contractors Obligations. The inspection of materials at any of the locations specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. Contractor will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to City's inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to accommodate City's testing efforts, including any travel required by Contractor's forces, shall be included in Contractor's bid and distributed in the Schedule of Pay Items related to the materials requiring testing. No additional compensation shall be made to the Contractor for this Work.

3.8 LOCAL CONDITIONS AND REQUIREMENTS

A. Access to Work and Haul Routes

1. General. All work on the rights-of-way necessary for access to the Site shall be performed by the Contractor. Contractors anticipated Haul Routes shall be in compliance with the City's approved Truck Routes available from the Engineer.
2. Access, Damage, Restoration. The Contractor shall make his own investigation of the condition of available public or private roads and of clearances, restrictions, bridge-load limits, permit or bond requirements, and other limitations that affect or may affect transportation and ingress or egress at the Site.
3. The Contractor shall maintain and repair any damage arising out of Contractor's operations to all roads used during construction of the

Project, and upon completion of all Work, but prior to final acceptance, the roads shall be restored to their original condition. Prior to using any road for access to the Site, the Contractor shall conduct a photograph and/or video survey of the roadway with a copy submitted to City's Representative.

4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.
- B. Power. Contractor shall provide at its own expense all necessary power required for operations under the contract. The Contractor shall provide and maintain in good order such modern equipment and installations as shall be adequate in the opinion of the Engineer to perform in a safe and satisfactory manner the Work required by the contract.
- C. Construction Water.
1. Construction water shall not be used for purposes other than those required to satisfactorily complete the contract.
 2. Construction recycled water will be made available to the contractor from one of three fill locations within the city limits. If there is a need for construction recycled water during construction, the contractor shall apply for a city construction recycled water meter at the city hall finance counter prior to the beginning of work. A security deposit of \$2,000 is required for the construction water meter from which the meter rental fee and cost of water will be deducted. if the rental fee and the water costs exceed the \$2,000.00 deposited, an invoice will be issued to the contractor for payment.
 3. Construction potable water will only be made available to the contractor if it can be demonstrated that recycled water cannot be used for the construction activities. potable water will be made available from existing city fire hydrant(s) nearest the proposed construction site as approved by the engineer, or by such other means as may be expressly approved in writing by the engineer. If there is a need for water during construction, the contractor shall apply for a city construction water meter at the city hall finance counter prior to the beginning of work. a security deposit of \$2,000 is required for the construction water meter from which the meter rental fee and cost of water will be deducted. If the rental fee and the water costs exceed the \$2,000.00 deposited, an invoice will be issued to the contractor for payment.
 4. All required water, all work and materials required for obtaining, pumping, transporting and applying and otherwise disposing of said water shall be in an approved manner and shall be performed by, and at the expense of the contractor and no extra or separate compensation will be made thereof.

D. Operation of Existing Water Facilities

1. The Contractor shall not operate any of the existing water systems, including pumps, motors, valves, and hydrants, but shall contact the City two (2) working days in advance with a list and location of the water system facilities that will require operating, opening, stopping, or closure by the City.
2. At the option of the Engineer, the Contractor may be permitted to operate valves for the purpose of making connections to existing mains. The City will perform all notification to existing customers regarding temporary loss of service.
3. Contractor shall submit a request on City's standard form for any shut-down of existing water facilities.

E. Construction at Existing Utilities

1. General. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodations to maintain, all utilities.
2. Permission, Notice and Liability. Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the City Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.
3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

F. Traffic Control

1. General. Contractor shall abide by traffic control plans approved by the City.
2. Protections. Roads subject to interference by the Work shall be kept open or suitable temporary passages through the Work shall be provided and

maintained by the Contractor. The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient flasher lights, flag persons, danger signals, and signs, and shall take all necessary precautions for the protection of the Work and the safety of the public. No construction work along public or private roads may proceed until the Contractor has proper barricades, flasher lights, flag persons, signals, and signs in place at the construction site.

3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

G. Cleaning Up

1. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the premises. Contractor shall also clean all asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment, including all USA markings. The use of water, resulting in mud on streets, will not be permitted as substitute for sweeping or other methods. Dust control may require having a water truck onsite for the duration of the project, and/or use of temporary hoses and pipelines to convey water.
2. Contractor shall fully clean up the site at the completion of the Work. If the Contractor fails to immediately clean up at the completion of the Work, the City may do so and the cost of such clean up shall be charged back to the Contractor.

3.9 ENVIRONMENTAL QUALITY PROTECTION

A. Environmental Conditions

[NOT USED]

B. Landscape and Vegetation Preservation

1. General. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work.
2. Damage and Restoration. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours.
3. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and

not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

C. Protected Species

1. General. If, in the performance of the Work, evidence of the possible occurrence of any State or Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within 2 Days.
2. Procedures. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal.

If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents.

3. False Siting. Any costs or delays incurred by City or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

D. Preservation of Historical and Archeological Resources

1. General. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor notify the Construction/Archeological Monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the Construction/Archeological Monitor and/or City within 2 Days.

2. Procedures. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource.

If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the City Representative and the Construction/Archeological Monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents.

3. Contractor's Liability. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

E. Dust and Pollution Control

1. Contractor shall provide all necessary material, equipment and labor to prevent and control the emission of dust and any other potential pollutant on site. Contractor shall remove construction caused debris from streets and sidewalks as directed by the Engineer.
2. Contractor shall not discharge into the atmosphere from any source smoke, dust or other air contaminants in violation of the law, rules, and regulations of the governing agency.
3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

F. Management of Storm, Surface and Other Waters

1. Storm water, surface water, groundwater, and nuisance, or other waters may be encountered at various times during construction of the Project. Federal and State laws require the City and its contractors to manage such waters pursuant to the requirements of California State Water Resources Control Board Order Number 2009-0009-DWQ, the Federal Clean Water Act, and the California Porter Cologne Water Quality Control Act. Contractor acknowledges that it has investigated the risk arising from such waters in conjunction with the Project, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

2. The Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the City's ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to the San Francisco Bay Regional Water Quality Control Board Order No. R2-2015-0049 (NPDES Permit No. CAS 612008), and State Water Resources Control Board Order No. 2010-0014-DWQ, Order No. 2009-0009-DWQ, and Order No. 2012-0006-DWQ, and any amendment or renewal thereof ("Construction General Permit"). Contractor must perform all construction operations in such a manner as to comply, and ensure all subcontractors to comply, with all applicable Federal, State, and local laws, orders, and regulations concerning the control and abatement of water pollution; and all terms and conditions of any applicable permits issued for the Project. In the event there is a conflict between Federal, State, and local laws, regulations, and requirements, the most stringent shall apply.

3. Compliance with Construction General Permit. Contractor must comply with all aspects of the Construction General Permit, State Water Resources Control Board (State Board) Water Quality Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, and any amendment or renewal thereof (NPDES CAS000002), for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common plan of development or sale.
 - (a) Permit registration. Unless otherwise specified in the Special Conditions, Contractor must prepare the Notice of Intet for coverage under the Construction General Permit and all Permit Registration Documents (PRDs), including but not limited to the Storm Water Pollution Prevention Plan (SWPPP), as those terms are defined in the Construction General Permit. Contractor must coordinate submittal of all PRDs with th eCity's Legally Responsible Person and/or Authorized Signatory, as those terms are defined in the Construction General Permit. The Contractor

must submit the PRDs, including the SWPPP to the City Representative for review not less than fifteen (15) Days prior to the start of on- site construction work. City will file the Notice of Intent and PRDs and pay the filing fee.

- (b) Before any Construction General Permit related documents may be submitted to the State Board or implemented on the Project site, they must first be reviewed and accepted by City. Acceptance by the City does not relieve the Contractor from ensuring such documents comply with all laws applicable laws, regulations, and orders.
- (c) Contractor must ensure that the SWPPP is developed by a Qualified SWPPP Developer and implemented by a Qualified SWPPP Practitioner as those terms are defined in the Permit. Contractor must implement the SWPPP and all other provisions of the Construction General Permit, including the monitoring and reporting requirements, preparing and submitting all reports, plans, inspections, and monitoring information in compliance with the Construction General Permit. The SWPPP must include industry standard requirements for water quality control including but not be limited to the following:
 - (1) Sediment and erosion control measures to manage sediment and erosion including vegetative practices, structural control, silt fences, straw dikes, sediment controls or operator controls as appropriate. Storm water management measures shall be instituted as required, including velocity dissipaters, and solid waste controls shall address controls for building materials and offsite tracking of sediment.
 - (2) Wastewater and storm water management controls to divert offsite surface flows around the Project site and to divert surface flows within the Project area away from areas of open earth or stockpiles of building and other materials. Wastewater from general construction activities, such as drain water collection, aggregate processing, concrete batching, drilling, grouting, or other construction operations, shall not enter flowing or dry watercourses without having met the authorized non-storm water discharge requirements listed in State Board Water Quality Order No. 2009-0009-DWQ, Section III.C., including proper notification to the Regional Water Board.
 - (3) Pollution prevention measures including methods of dewatering, unwatering, excavating, or stockpiling earth and rock materials which include prevention measures to control silting and erosion, and which will intercept and settle any runoff of sediment-laden waters.

- (4) Turbidity prevention measures for prevention of excess turbidity including, but are not restricted to, intercepting ditches, settling ponds, gravel filter entrapment dikes, flocculating processes, recirculation, combinations thereof, or other approved methods that are not harmful to aquatic life. All such wastewaters discharged into surface waters, shall contain the least concentration of settleable material possible, and shall meet all conditions of section 402, the National Pollutant Discharge Elimination System (NPDES) permit.
- (5) Overall construction site management measures to address changes at the Project site as the Project moves through different phases and changes that account for rainy and dry season management practices.
- (6) Pollution control measures and construction activity methods that will prevent entrance, or accidental spillage, of solid matter, contaminants, debris, or other pollutants or wastes, into streams, flowing or dry watercourses, lakes, wetlands, reservoirs, or underground water sources. Such pollutants and wastes include, but are not restricted to: refuse, garbage, cement, sanitary waste, industrial waste, hazardous materials, radioactive substances, oil and other petroleum products, aggregate processing, tailings, mineral salts, and thermal pollution.
- (7) Control measures for stockpiled or deposited materials prohibiting the stockpile or deposit of excavated materials, or other construction materials, near or on stream banks, lake shorelines, or other watercourse perimeters where they can be washed away by high water or storm runoff, or can, in any way, encroach upon the watercourse.
- (8) Develop and implement a Rain Event Action Plan (REAP), if required, that must be designed and implemented to protect all exposed portions of the site 48 hours prior to any likely precipitation event.
- (9) Monitoring, reporting and record keeping, as necessary to achieve compliance with applicable Permit requirements, including but not limited to annual reports and rain event reports.
- (d) City retains the right to procure and maintain coverage under the Construction General Permit for the Project site if the Contractor fails to draft a SWPPP or other Construction General Permit related document, or fails to proceed in a manner that is satisfactory to City. City reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Contractor has adequately

maintained compliance with the Construction General Permit shall be City's sole determination. In the event that Contractor has failed or is unable to maintain compliance with the Construction General Permit, any costs or fines incurred by City in implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Contractor.

4. For those Work sites where construction activity results in the disturbance of less than one acre of total land area and/or do not need coverage under the Construction General Permit, the Contractor shall be responsible for preparing and implementing construction industry best management practices to eliminate or reduce the discharge of pollutants from construction sites, such as the best management practices set forth in the CASQA Construction BMP Handbook.
5. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, district, drainage district, flood control district, and other local agencies regarding discharges of storm water, surface water, groundwater or other nuisance waters off of the Project site.
6. Contractor violations.
 - (a) Failure to implement the SWPPP or otherwise comply with the Construction General Permit or local state and federal laws is a violation of this Contract. Notwithstanding any other indemnity contained in this Agreement, Contractor agrees to indemnify, defend – with counsel acceptable to the City – and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.
 - (b) City reserves the right to defend any enforcement action or civil action brought against the City for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the City for the costs associated with, any enforcement action and/or settlement reached between the City and any relevant enforcement entity.
 - (c) City may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the the laws, regulations and

policies described in this Article, or any other relevant water quality law, regulation, order, or policy.

- (d) If noncompliance with any relevant law, regulation or permit, order, or policy occurs, the Contractor shall report this to the City Representative immediately, with the specific information submitted in writing within 2 Days. Consistent violations of applicable Federal, State, or local laws, orders, regulations, or Water Quality Standards may result in City stopping all site activity until compliance is ensured. The Contractor shall not be entitled to any change in Contract Price or Contract Times, claim for damage, or additional compensation by reason of such a work stoppage. Corrective measures required to bring activities into compliance shall be at the Contractor's expense.

7. Oil storage tanks management.

- (a) Storage tank placement. All oil or other petroleum product (hereinafter referred to collectively as oil) storage tanks shall be placed at least 20 feet from streams, flowing or dry watercourses, lakes, wetlands, reservoirs, and any other water source.
- (b) Storage area dikes. Storage areas shall be diked at least 12 inches high or graded and sloped to permit safe containment of leaks and spills equal to the capacity of all tanks and/or containers located within each area, plus a sufficient amount of freeboard to contain the 25-year rainstorm.
- (c) Diked area barriers. Diked areas shall have an impermeable barrier at least 10 mils thick. Areas used for refueling operations shall have an impermeable liner at least 10 mils thick buried under 2 to 4 inches of soil.
- (d) Spill Prevention Control and Countermeasure Plan (SPCC). Where the location of a construction site is such that oil from an accidental spillage could reasonably be expected to enter into or upon the navigable waters of the United States or adjoining shorelines, and the aggregate storage of oil at the site is over 1,320 gallons or a single container has a capacity in excess of 660 gallons, the Contractor shall prepare an SPCC Plan. The Contractor shall submit the SPCC Plan to the Engineer at least 30 days prior to delivery or storage of oil at the site. The Plan must have been reviewed and certified by a registered professional engineer in accordance with 40 C.F.R., part 112

- 8. Underground tank prohibition. The Contractor shall not use underground storage tanks.
- 9. Construction safety standards. The Contractor shall comply with the sanitation and potable water requirements of Section 7 of United States

Bureau of Reclamation's publication "Reclamation Safety And Health Standards."

10. Other Permits.
 - (a) Other permits applicable to the Project are listed in the Special Conditions. The Contractor shall obtain all other necessary licenses and permits.
 - (b) Monitoring. The Contractor is required to conduct monitoring in order to meet the requirements of the permits, which may include sampling, testing and inspections.
 - (c) Recordkeeping. The Contractor shall retain all records and data required by the permits for the time specified in the contract.
11. Cost. Except as specified herein, the cost of complying with this section shall be included in the Schedule of Pay Items for work which necessitate the water pollution prevention measures required by this paragraph.

END OF GENERAL REQUIREMENTS

EXHIBIT "A"

CHANGE ORDER FORM



City of Milpitas
455 E. Calveras Boulevard
Milpitas, California 93035

CONTRACT CHANGE ORDER NO. ____

Date: [INSERT]

To: [CONTRACTOR NAME]

[ADDRESS]

[ADDRESS]

Attn: [CONTRACTOR REP]

Project: [INSERT]

This Change Order covers changes to the contract as described herein. The Contractor shall construct, furnish equipment and materials, and perform all work as necessary or required to complete the Change Order items for the amount agreed upon between the Contractor and City of Milpitas and set forth herein.

Item No.	Description of Changes	Increase/ (Decrease) in Contract Amount	Contract Time Extension, Days
1			
2			
	Totals	\$	

Original Contract Amount:	\$XX.00
Change by Previous Change Order(s):	\$XX.00
Contract Price Prior to this Change Order:	\$XX.00
Current Change Order Amount:	\$XX.00
Revised Contract Amount including this Change Order:	\$XX.00

The Contract Price and Contract Time shall be adjusted as set forth above. The undersigned Contractor approves the foregoing Change Order as to the changes, if any, in the contract price specified for each item including any and all supervision costs and other miscellaneous costs relating to the change in work, and as to the extension of time allowed, if any, for completion of the entire work on account of said Change Order. The Contractor agrees to furnish all labor and materials and perform all other necessary work, inclusive of the directly or indirectly related to the approved time extension, required to complete the Change order items. This document will become a supplement of the contract and all provisions will apply hereto. It is understood that the Change Order shall be effective when approved by the City.

Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising out of or related to the subject of this Change Order and acknowledges that the compensation (time and cost) set forth herein comprises the total compensation due for the work or change defined in the Change Order, including all impact on any unchanged work. By signing this Change Order, the Contractor acknowledges and agrees that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for any acceleration or interruption of schedules, extended overhead costs, delay, and all impact or cumulative impact on all Work under this Contract. The signing of this Change Order acknowledges full mutual accord and satisfaction for the change and that the stated time and/or cost constitute the total equitable adjustment owed the Contractor as a result of the change. The Contractor hereby releases and agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim or request for equitable adjustment of any type, for any reasonably foreseeable cause that shall arise out of, or as a result of, this Change Order and/or its impact on the remainder of the Work under the Contract.

Accepted:

	_____ (Signature) Contractor's Authorized Representative	_____ Date
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Recommended:

	_____ (Signature) Tony Ndah, Director of Public Works	_____ Date
--	--	---------------

Approved:

	_____ (Signature) Steven G. McHarris, City Manager	_____ Date
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This Contract Change Order consists of **2 pages** and any exhibits attached to this Contract Change Order shall not be part of the Contract Change Order unless specifically initialed by or on behalf of both the Contractor and the City of Milpitas.

Contract Change Order #

Exhibit B “Scope of Work”

I. SCOPE

The City of Milpitas has an immediate need for concrete repair work on public right-of-way sidewalks. The work shall be performed in accordance with these specifications in Exhibit “B” and in conformity with the lines, grades, and typical cross-sections shown on the plans.

1. Area of Coverage:

The following locations within City of Milpitas jurisdiction are identified in Exhibit C. The site list includes street location, sidewalk replacement dimension(s), linear feet of curb and gutter replacement (if applicable), and whether the site requires concrete grinding.

2. Specification Reference(s):

Where State Specifications and Standard Plans are referred to, it shall mean City of Milpitas, Engineering Division, **Standard Drawings, No. 419, 420, 422, 423, 425, 426, 427, 430, 432, 434, and 436** (See Exhibit “B”)

3. Fees and Permits:

The contractor shall procure all permits required to carry out and complete specified work. Where payment for permits are to be made to the City of Milpitas, such fees are waived.

II. MINIMUM QUALIFICATIONS

1. The contractor must have a minimum of five (5) years of relevant experience in commercial cement work.
2. Contractor's License Required. This work requires a California Contractor's State License Board License Class A - General Engineering Contractor, Class C-8 Concrete Contractor; or other appropriate license required to complete the specified work.
3. The contractor shall maintain a current business license with the City of Milpitas. The bidders State contractor's license must not be currently under probation or suspension as set forth by the State of California, Department of Consumer Affairs.
4. The Contractor shall designate one qualified project manager to serve as the principal contact for the City whose resume shall be submitted as a part of the bid.

III. RECORDS / DOCUMENT OWNERSHIP

The Contractor shall keep, and require subcontractors to keep, records as necessary to perform the services required by this Contract and enable the City to evaluate the performance of such services. The City of Milpitas shall maintain full access to records. This includes the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the Contract, and the City

shall have access to such records in the event any audit is required. The Contractor assumes the cost of producing records to the City.

All drawings, specifications, reports, records, documents, and other materials prepared by Contractor, its employees, subcontractors and agents in the performance of this Contract shall be the property of City and shall be delivered upon request to the City Supervisor.

The drawings, specifications, reports, records, documents, and other materials prepared by the Contractor in the performance of services under this Contract shall not be released publicly without the prior written approval of the Public Works Director.

IV. EXECUTION

General

The successful bidder shall furnish all labor, tools, equipment, transportation, supervision and materials necessary for the completion of the following work in a workmanlike manner as customary for the Contractor's License and the type of work.

The Contractor shall ensure that they are qualified and experienced and have the necessary resources for the successful completion of the work including any amendments as they may occur during the execution of the work.

All equipment, materials, and labor utilized, and all workmanship shall comply with all current codes, standards, regulations, City ordinances, and statutes pertaining to the services.

When requested, the Contractor shall provide proposal(s) for work using the rate sheet provided by the Contractor to provide the city with formal estimates for review.

Scheduling

The Contractor shall submit a complete, tentative project schedule at the time of the preconstruction meeting. A minimum of seven (7) working days prior to beginning work on any of the streets, the Contractor shall submit to the City Project Manager for approval a detailed written schedule of work listing the dates on which individual streets shall be impacted.

Following approval, the Contractor shall adhere diligently to the approved written schedule in the prosecution of the work. The contractor shall post No Parking signs on affected streets indicating the date of work at least 48 hours prior to the actual work.

The Contractor shall have 90 days to complete all work.

Preparation

Subgrade preparation for sidewalks shall be made to the required depth and to a width that will permit the installation and bracing of the forms.

The subgrade shall be shaped and compacted to a firm, even surface in reasonably close conformity with the grade and section on the plans. All soft and yielding material shall be removed and replaced with acceptable material, which shall then be compacted.

The prepared subgrade shall then be brought to true line and grade with a minimum depth of two inches (2") of mineral aggregate base, unless specified otherwise on the drawings.

Repair of Sidewalk, Curbs & Gutters

Sidewalk Repairs shall consist of repairing failed sections of existing sidewalks indicated by Table A in Section I of these specifications.

Failed sections of sidewalks, curbs, or gutters shall be saw cut to the depth of the failed section at the removal boundary. Boundaries shall be existing score marks or expansion joints, or as designated by the City Supervisor.

This work consists of the removal and replacement of damaged concrete sidewalk and the removal and replacement of concrete curb and gutter. Root removal may be necessary at each location. City Project Manager should be consulted prior to root removal. Exact locations of sidewalk replacement and root removals are to be determined by the City Project Manager.

Tree removal will be completed by current City Tree Contractor/Arborist and coordination of this effort will be discussed at the pre-construction meeting.

The contractor shall remove the failed concrete section to a depth of four inches (4") or to the bottom of the concrete if the concrete depth is greater than four (4") inches.

Removal of the failed concrete shall be performed in such a manner that the saw cut edge of the remaining concrete is undisturbed and undamaged.

All concrete locations shall be shaved to provide a smooth transition between concrete slabs. The shave areas shall be uniform, smooth, contain minimal grooving and be straight at the backline with little or no scarring of the adjacent concrete. Any transitions shall conform to the latest American Disability Act Accessibility Guidelines.

Site Conditions

The Contractor shall maintain a neat appearance at the work site in all areas visible to the public. Broken concrete, asphalt concrete, soil, tree branches and roots and other debris developed during construction shall be disposed of concurrently with its removal on a daily basis. Stockpiling of new materials shall be permitted only with the approval of the City Project Manager and only in approved locations.

The Contractor shall clean up all rubbish and excess materials from the work site on a daily basis, the material storage site, and all ground occupied by Contractor in connection with this work. All tree, roots, wood chips, branches, soil and concrete debris shall be removed from each repair location on a daily basis. The Contractor shall leave all parts of the work in a neat and presentable condition on a daily basis and prior to final inspection of the work by the Project Manager.

Upon demolition of sidewalk project sites, open excavations shall not remain open longer than 72 hours unless approved by the City in advance.

The Contractor may not stage equipment or vehicles on any public right of way longer than 48 consecutive hours.

Traffic Control

The Contractor shall submit a traffic control plan for approval by the City prior to the commencement of work. The contractor shall provide all necessary signs, advance warning signs, barricades, caution tape, guards, flagmen, arrow boards and other safety devices as may be required by the City Supervisor to give advised and reasonable protection, safety, and warning to persons and vehicular traffic in the area. Sidewalk closure signs shall be placed at each sidewalk

replacement location. All traffic control devices and methods shall conform to the applicable sections of the current State Specifications and the “Manual of Traffic Controls for Construction and Maintenance Work Zones”, except as specified herein.

The costs of providing traffic control, including all necessary personnel, directional and safety equipment, and all work involved in traffic control, shall be included in the various bid items for this contract and no additional payment will be allowed.

Dust Control

The provisions of Section 10 of the State Specifications shall govern, except that the water is not a pay item, and the entire cost of preventing dust nuisance shall be at the expense of the Contractor.

Licenses and Permits

The Contractor shall procure a Hydrant Permit as per the requirements. Inquiries regarding Hydrant permits should be directed to 408-586-3100. Full compensation for obtaining and complying with the requirements of WATER METER RENTAL shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed.

Safety Compliance

Contractor accepts responsibility for determining that all necessary safeguards and PPE for protection of contractor’s employees are available or will be furnished to employees. All work performed must conform to CAL-OSHA standards. If the Contractor is observed failing to meet these requirements, the City reserves the right to issue a “Stop Work” notice at which point the Contractor will cease operations at the work site until safety compliance is implemented and formal notice to resume operations by the City Supervisor has been issued. The Contractor is responsible for any cost(s) associated with the disruption of operations as a result safety non-compliance delay.

The Contractor shall inform the City Supervisor immediately if a safety hazard is discovered within a City public right of way.

Hours of Work

All work is to be done from 8 a.m. to 5 p.m. Any request(s) for work outside of these times must be approved in advance by the City Supervisor.

Project Staff

Contractor shall employ a complete and competent project staff for the duration of the work. Contractor shall not replace the Project Manager without a minimum seven (7) days written notice and submission of the new project manager’s resume. Any changes in Project Manager shall be subject to the City’s approval.

The Project Manager will always be on site to oversee work from the first day of mobilization until the last punch list item is signed off. The project manager shall have the authority to control crew size and will focus on adherence to the schedule, troubleshooting, coordination with the City Supervisor, as well as other trades and quality assurance. Contractor must provide the City Supervisor with an emergency telephone number where the Contractor’s project manager may be reached at any time, 24 hours a day.

Recycling and Reuse

Excess material including, but not limited to, broken concrete and paving materials, clean earth, clean mud, clean soil shall be removed from the job site for recycling at the Contractors expenses.

The Contractor shall be responsible for the removal; hauling, loading, stockpiling, inspecting, testing, and re-handling as necessary for recycling of excess material offsite in a legal manner and no additional compensation shall be made.

The City defines clean mud, soil, dirt, earth etc. as having an Environmental Screening Levels (ESLs) equal to or below the Commercial/Industrial Land Use defined by the Current San Francisco Regional Water Quality Control Board Table A with exception to Arsenic and Vanadium at levels up to 5.5 mg/kg (Background levels) for excess Material from within City right-of-way.

The Contractor shall, as appropriate, reuse any useful construction materials generated during the project. The Contractor shall recycle all paving materials including, but not limited to aggregate base material, asphalt, and concrete. The Contractor shall perform all recycling or reuse of material by removing from the job site at no additional cost to the City. The Contractor shall provide a copy of the "Weight Ticket" listing the descriptions and quantities of all materials recycled to the City Supervisor.

The contractor is advised that extreme care shall be required of him in the construction of all construction joints with existing concrete. All such joints shall be subject to the approval of the City Supervisor.

Water

Potable water will be made available from existing City fire hydrant(s) nearest the proposed construction site as approved by the City Supervisor. If there is a need for water during construction, the Contractor shall apply for a City construction water meter at the City Hall Finance Counter prior to the beginning of work. A security deposit of \$2,000 is required for the construction water meter from which the meter rental fee and 'cost of water will be deducted. If the rental fee and the water costs exceed the \$2,000.00 deposited, an invoice will be issued to the contractor for payment.

All required water, all work, and materials required for obtaining, pumping, transporting and applying and otherwise disposing of said water shall be in an approved manner and shall be performed by, and at the expense of the Contractor and no extra or separate compensation will be made thereof.

Inspection and Acceptance

- a) All services provided shall be subject to inspection and shall meet the approval of the City. If they not approved, the City shall have the right to reject them or to require correction.
- b) Acceptance or rejection of the work shall be made as promptly as practical, but failure to accept or reject the work shall not relieve the Contractor from responsibility for services provided not in accordance with the contract.
- c) The City will not be deemed to have accepted the services by virtue of a partial or full payment for it.

- d) The City shall be the final judge of all services and its decisions of all questions in dispute will be final.

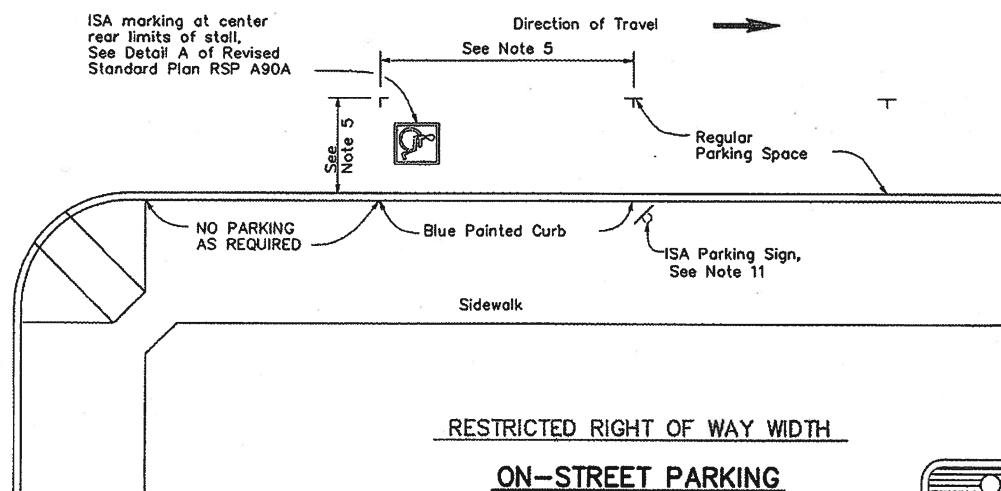
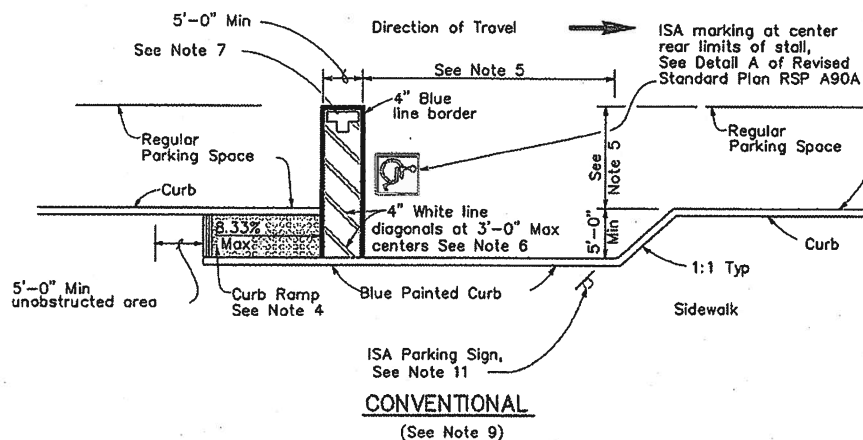
Exhibit C

Job Site Listing

Site No.	Location	Size	Sidewalk Sq.Ft	Curb Gutter LF	Additional Work per Site
1	1120 Park Oak Ct	4x16	64		
2	587 Prada Dr	4x4	16		
3	1132 Park Oak Ct	4x20	80	20	
4	1309 Jungfrau Ct	4x6	24		
5	1010 Jungfrau Ct	4x10	40		Driveway Approach
6	587 Prada Dr	4x4	16		
7	1009 Big Bear Ct	4x6	24		
8	1192 Park Oak Ct	4x12	48		
9	1015 Horcajo St	4x4	16		
10	455 Roswell	4x20	80		
11	485 Roswell	5x6	30		Driveway Approach
12	626 Penitencia St	4x44	176	44	
13	191 Manfred St	5x24	120	24	
14	225 S Milpitas Blvd	4x21	223		
		4x15			
		4x19			
15	1001 Pheonix Ct	4x8	32		
16	190 Dixon Rd	4x6	24		Driveway Approach
17	1677 Yellowstone Ave	4x39	156	15	
18	396 Martil Way	4x6	24		
19	2200 Skyline Dr	4x10	40		
20	1151 N. Abbott Ave	4x48	224	9	
		4x8			
21	157 Beacon Dr.	4x26	104		
22	Washington Dr. @ Pomeroy School	4x52			
		6x23 D/W			
23	425 Gross St	4x12	48	23	
24	434 Gross St	8x9	72		Driveway Approach
25	1342 Guerrero Ct	4x25		19	
		6x9			
		4x11			
26	423 Corinthia Dr.	4x8	32		
27	623 Aberdeen way	4x4	16		
28	345 Monmouth	4x42	168	42	
29	2113 Skyline	4x37	148	37	
30	748 Singley	4x14	56		
31	550 Hillview	5x5	25		
32	1443 Saturn Ct	4X8	32		
33	947 Hillview Dr	4X11	44		
34	466 Roswell Dr	4X15	60		
35	506 Curtner Dr	4x12	108		
		4x15			
36	1557 Stemel	4X6	24		
37	2035-2079 Yellowstone	11530 sqft	11530	913	3 ADA Truncated Domes Two Driveways
38	634 Santos Ct	4X33	132		
39	889 Galindo Court	4x70	280		
40	600 Barber Ln	5X13	65	18	
41	1154 Ayer St	9X36	459	35	
		9X15			
42	841 Strickroth	4x12	48		
43	859 Russell Ln	4x68	272	55	
44	Across 1425 N McCarthy	4x10	40		
45	190 Corning	4x10	40	10	
46	901 Ames	6x32	192		
47	1706 Clear Lake Ave	4x10	40		

Exhibit "D"
City Drawings

[BEGINS ON FOLLOWING PAGE]



NO PARKING

PAVEMENT MARKING
See Note 7



SIGN R99 (CA)

SIGN R99C (CA)
See Note 3PLAQUE R99B (CA)
SIGN R99 (CA) with PLAQUE R99B (CA)
See Note 3

ISA = International Symbol of Accessibility

CITY OF MILPITAS, ENGINEERING DIVISION

STANDARD DRAWING
NO. 422

REVISION

DATE

ACCESSIBLE PARKING
ON-STREET

DATE : 6/15/10

SHEET 1 OF 2

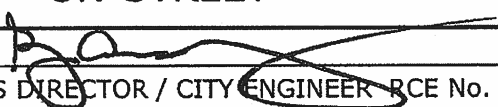
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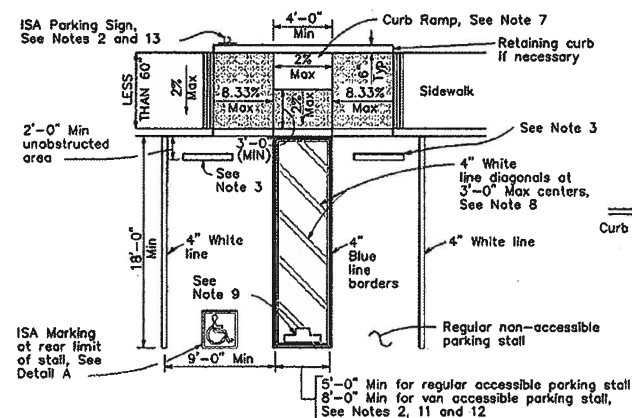
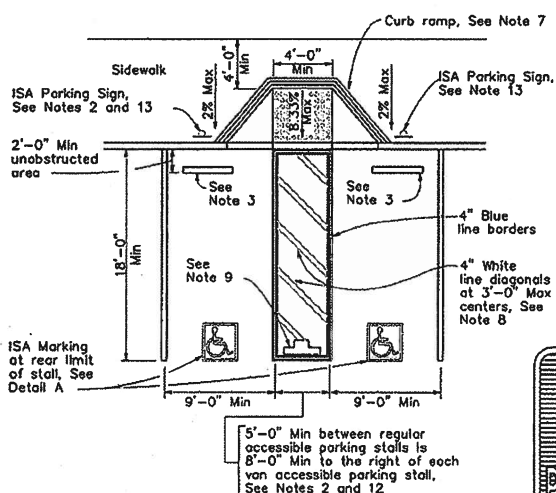
APPROVED BY:

PUBLIC WORKS DIRECTOR / CITY ENGINEER RCE No. 40283

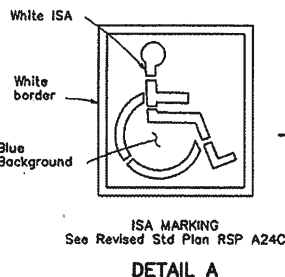
NOTES:

1. Parking spaces shall be so located that persons with disabilities are not compelled to wheel or walk behind parked cars other than their own.
2. Surface slopes of accessible on-street parking spaces shall be the minimum feasible.
3. Where Plaque R99B (CA) or Sign R99C (CA) are installed, the bottom of the sign or plaque panel shall be a minimum of 7'-0" above the surrounding surface.
4. Curb ramps shall conform to the details shown on City's Standard Drawing Nos. 419 and 420.
5. Accessible on-street parking spaces shall not be less than 20'-0" in length and not less than 8'-0" in width.
6. Glue-on or bolt down tactile warning plates shall not be used.
7. The words "NO PARKING", shall be painted in white letters no less than 1'-0" high on a contrasting background and located so that it is visible to traffic enforcement officials. See Standard Plan A24E for square foot area for painting the words "NO PARKING".
8. There shall be no obstructions on the sidewalk adjacent to and for the full length of the parking space, except for the ISA parking sign shown.
9. The Conventional detail should be the primary choice of accessible on-street parking. However, if the sidewalk lacks adequate space to construct a standard curb ramp, the Restricted Right of Way detail should be used.
10. If the Restricted Right of Way width detail is selected and it conflicts with a bus stop or other uses, this detail may apply to the other end of the block.
11. Accessible Parking Only Sign shall be Sign R99C (CA) or Sign R99 (CA) with Plaque R99B (CA).

CITY OF MILPITAS, ENGINEERING DIVISION			STANDARD DRAWING
REVISION	DATE	ACCESSIBLE PARKING ON-STREET	NO. 422
1	1997		DATE : 6/15/10
2	2001		SHEET 2 OF 2
3	2010		
		APPROVED BY:  PUBLIC WORKS DIRECTOR / CITY ENGINEER RCE No. 40283	

**SINGLE PARKING STALL****DOUBLE PARKING STALL****TABLE A**

Total Number of Parking Spaces or Stalls	Minimum Number of Disabled Accessible Parking Spaces or Stalls
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1000	2 percent of total
Greater than 1001	20 plus 1 for each 100 or fraction thereof over 1001

**DETAIL A**

SIGN R99 (CA)



PLAQUE R99B (CA)

SIGN R99 (CA) with PLAQUE R99B (CA)
See Note 6SIGN R99C (CA)
See Note 6SIGN R100B (CA)
See Note 10SIGN R7-8b
See Notes 2 and 6

ISA = International Symbol of Accessibility

OFF-STREET PARKING SIGNS(Parking lot or garage)
See Note 6**CITY OF MILPITAS, ENGINEERING DIVISION****STANDARD DRAWING
NO. 423**

REVISION

DATE

**ACCESSIBLE PARKING
OFF-STREET**

DATE : 6/15/10

SHEET 1 OF 2

APPROVED BY:

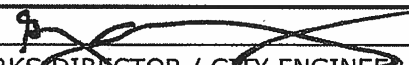
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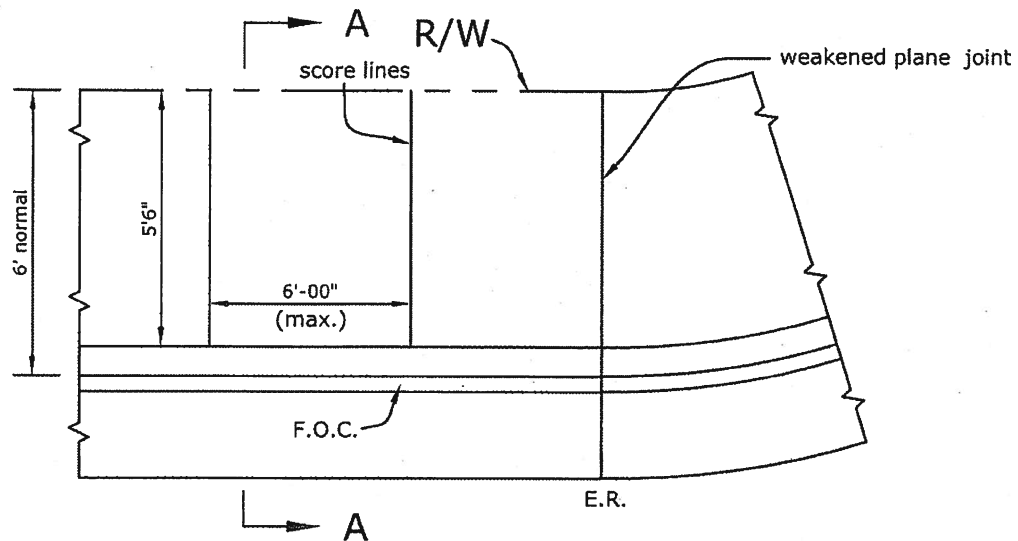
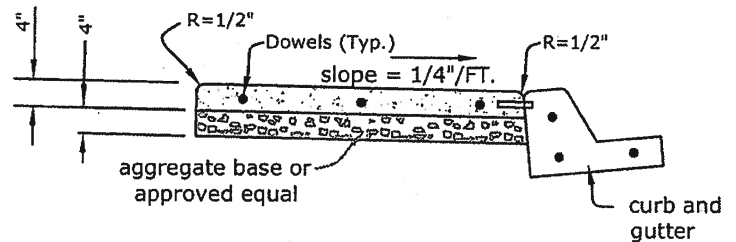
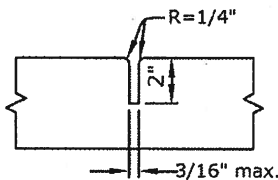
PUBLIC WORKS DIRECTOR / CITY ENGINEER PCE No. 40283

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NOTES:

1. Accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility.
2. One in every eight accessible off-street parking stalls, but not less than one, shall be served by an accessible aisle of 8'-0" minimum width and shall be signed van accessible. The R7-8b sign shall be mounted below the R99B (CA) plaque or the R99C (CA) sign.
3. In each parking stall, a curb or bumper shall be provided and located to prevent encroachment of vehicles over the required width of walkways. Parking stalls shall be so located that persons with disabilities are not compelled to wheel or walk behind parked cars other than their own.
4. Surface slopes of accessible off-street parking stalls shall be the minimum possible and shall not exceed 2 percent in any direction.
5. Table A shall be used to determine the required number of accessible parking stalls in each parking lot or garage.
6. Where Plaque R99B (CA), Sign R99C (CA) or Sign R7-8b are installed, the bottom of the sign or plaque panel shall be a minimum of 7'-0" above the surrounding surface.
7. Curb ramps shall conform to the details shown on City's Standard Drawing Nos. 419 and 420.
8. Blue paint, instead of white may be used for marking accessibility aisles in areas where snow may cause white markings to not be visible.
9. The words "NO PARKING", shall be painted in white letters no less than 1'-0" high and located so that it is visible to traffic enforcement officials. See Revised Standard Plan RSP A90B for details of the "NO PARKING" pavement marking.
10. A R100B (CA) sign shall be posted in a conspicuous place at each entrance to off-street parking facilities or immediately adjacent to and visible from each stall. The sign shall include the address where the towed vehicle may be reclaimed and the telephone number of the local traffic law enforcement agency.
11. Where a single (non-van) accessible parking space is provided, the loading and unloading access aisle shall be on the passenger side of the vehicle as the vehicle is going forward into the parking space.
12. Where a van accessible parking space is provided, the loading and unloading access aisle shall be 8'-0" wide minimum, and shall be on the passenger side of the vehicle as the vehicle is going forward into the parking space.
13. Accessible Parking Only Sign shall be Sign R99C (CA) or Sign R99 (CA) with Plaque R99B (CA).
14. Glue-on or bolt down tactile warning plates shall not be used.

CITY OF MILPITAS, ENGINEERING DIVISION		STANDARD DRAWING NO. 423
REVISION	DATE	
1	1997	DATE : 6/15/10
2	2001	
3	2010	
APPROVED BY:  PUBLIC WORKS DIRECTOR / CITY ENGINEER RCE No. 40283		SHEET 2 OF 2

PLANWEAKENED PLANE JOINTSECTION A-A**Notes:**

1. Weakened plane joints shall be constructed at ends of curb returns; curb inlets, other structures and at 12' intervals except in driveway sections. Joints shall match adjacent improvements.
2. Use Portland Cement Concrete containing not less than 564 lbs. of Type I or I/II Portland Cement per cubic yard with a compressive strength of not less than 3000 psi. at 28 days, with a medium broom finish.
3. Score lines shall be 1/4" deep.
4. Use 3-#4 X 9" dowels at the expansion joints or when jointing new sidewalk to existing.
5. Dowels connecting new sidewalk to an existing concrete curb shall be 6" from ends and 5'-6" max. from center of 12' curb and gutter sections.
6. Meandering sidewalk shall be within PSUE as shown on plans.
7. Industrial sidewalk shall be constructed on both sides of the street.

NOT TO SCALE.

CITY OF MILPITAS, ENGINEERING DIVISION

STANDARD DRAWING
NO. 425

REVISION

DATE

INDUSTRIAL SIDEWALK

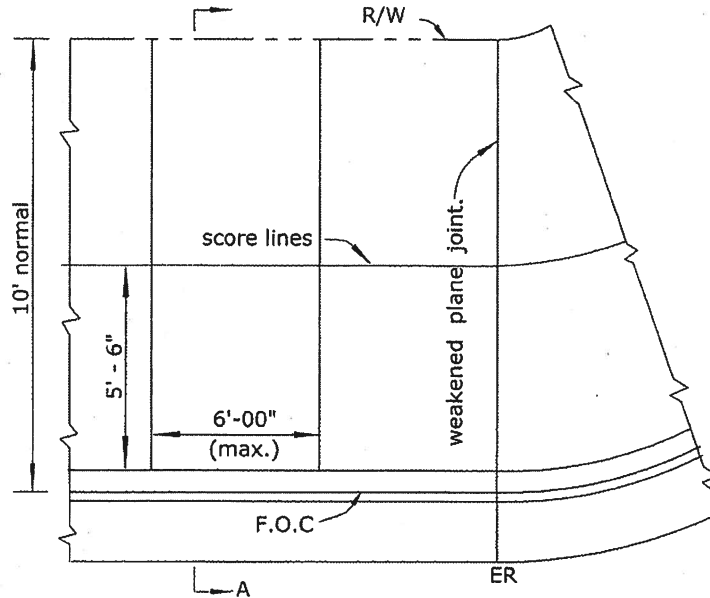
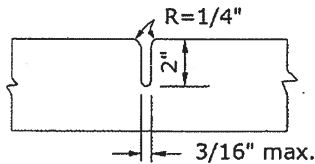
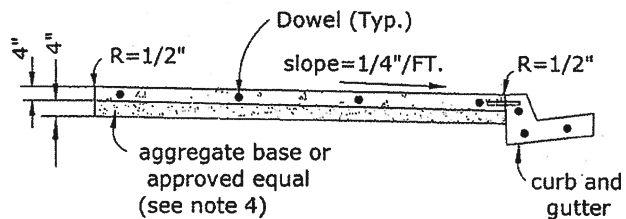
DATE : 6/15/10

SHEET 1 OF 1

202

APPROVED BY:

PUBLIC WORKS DIRECTOR / CITY ENGINEER RCP No. 40283

PLANWEAKENED PLANE JOINTSECTION ANOTES:

1. Weakened plane joints shall be constructed at ends of curbs returns, curb inlets, other structures and at 12' intervals except in driveway sections. Joints shall match adjacent improvements.
2. Use Portland Cement Concrete containing not less than 564 lbs. of Type I or I/II Portland Cement per cubic yard with a compressive strength of not less than 3000 psi. at 28 days, with a medium broom finish.
3. Score lines shall be 1/4" deep.
4. Use 4-#4 X 9" dowels at the expansion joints or when jointing new sidewalk to existing.
5. Dowels connecting new sidewalk to an existing concrete curb shall be 6" from ends and 5'-6" max. from center of 12' curb and gutter sections.
6. Commercial sidewalk shall be constructed on both sides of the street.

NOT TO SCALE

CITY OF MILPITAS, ENGINEERING DIVISION

STANDARD DRAWING
NO. 426

REVISION

DATE

1

1975

COMMERCIAL SIDEWALK

2

2001

DATE : 6/15/10

3

2010

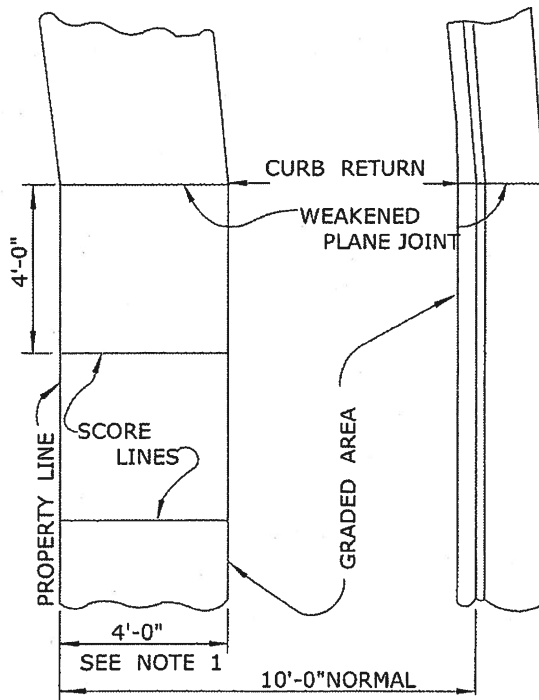
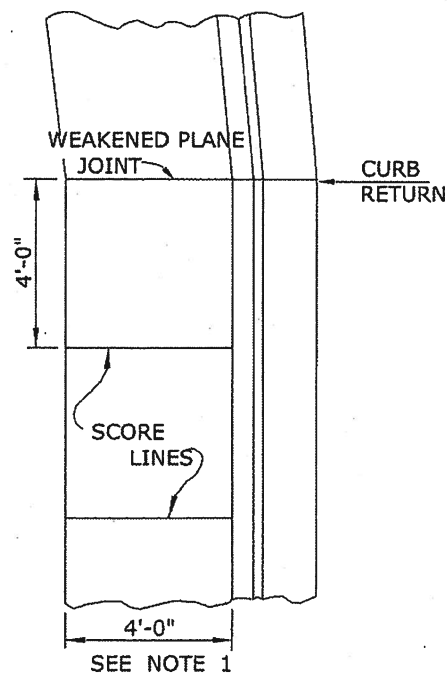
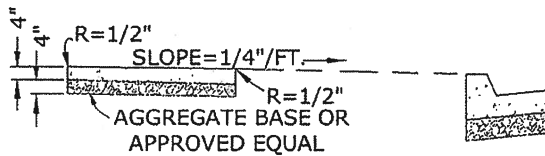
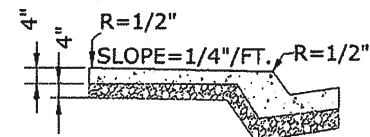
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APPROVED BY:

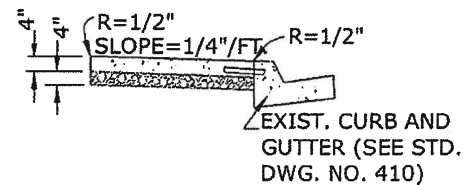
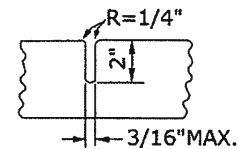
PUBLIC WORKS DIRECTOR / CITY ENGINEER RCE No. 40283

SHEET 1 OF 1

203

PLANPLANTYPICAL SECTION
CURB & WALK SEPARATEDTYPICAL SECTION
CURB & WALK CONTIGUOUSNOTES:

1. Width of the sidewalk shall be 4' unless otherwise noted on plans. Residential sidewalk shall be constructed on both sides of residential street.
2. Weakened plane joints shall be constructed at ends of curb returns, curb inlets, other structures and at 12' intervals except in driveway section. Joints shall match adjacent improvements.
3. Use Portland Cement Concrete containing not less than 564 lbs. of Type I or I/II Portland Cement per cubic yard with a compressive strength of not less than 3000 psi. at 28 days, with a medium broom finish.
4. Score lines shall be 1/4" deep & 48" apart.
5. Use 3-#4 X 9" dowels at the expansion joints or when jointing new sidewalk to existing.

TYPICAL SECTION
CURB & WALK CONTIGUOUSWEAKENED PLANE JOINT

NOT TO SCALE

CITY OF MILPITAS, ENGINEERING DIVISION

STANDARD DRAWING
NO. 427

REVISION

DATE

RESIDENTIAL SIDEWALK

DATE : 6/15/10

1

1975

2

2001

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2010

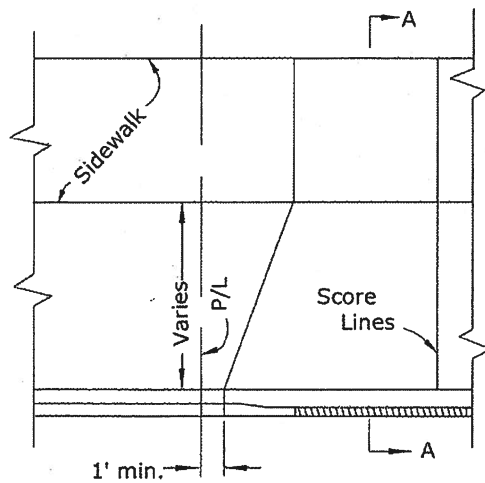
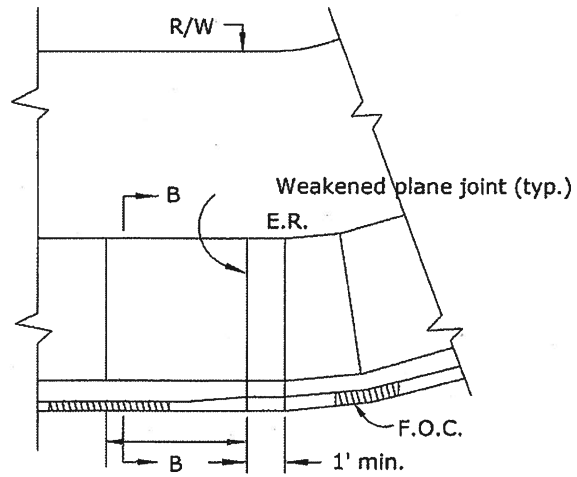
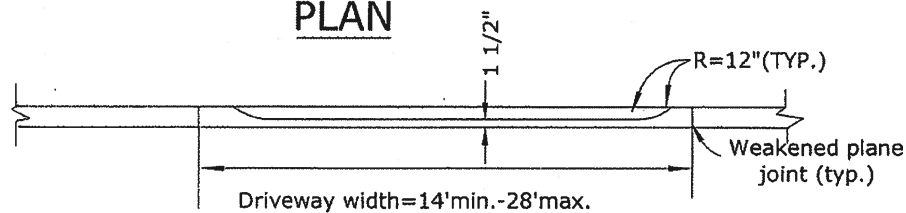
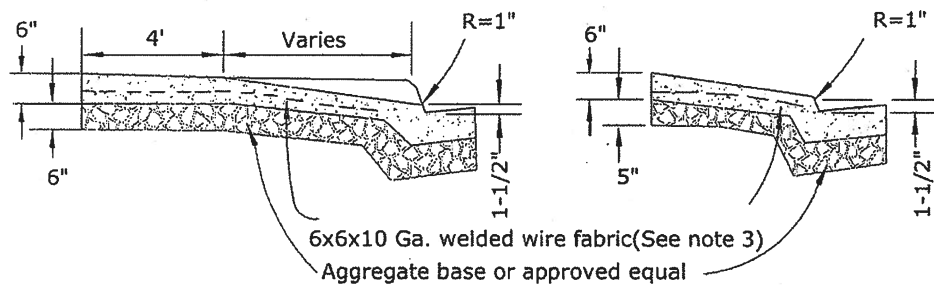
3

APPROVED BY:

PUBLIC WORKS DIRECTOR / CITY ENGINEER RCE No. 40283

SHEET 1 OF 1

204

**CURB & WALK SEPARATED****CURB & WALK CONTIGUOUS****PLAN****ELEVATION****SECTION A-A****SECTION B-B****NOTES:**

1. Score lines shall be 1/4 inch deep and 48 inches apart in sidewalk areas.
2. Use Portland Cement Concrete containing not less than 564 lbs. of Type I or I/II Portland Cement per cubic yard with a compressive strength of not less than 3000 psi. at 28 days, with a medium broom finish min.
3. Welded wire fabric shall be used when driveway serves more than one residential units.
4. Driveway locations shall be approved by the City Engineer.
5. The minimum spacing between driveways serving the same parcel shall be 18 feet.
6. Limits of driveway width shall be as shown unless otherwise approved by the City Engineer.
7. Access to developed site shall be maintained.

NOT TO SCALE

CITY OF MILPITAS, ENGINEERING DIVISION**STANDARD DRAWING
NO. 430**

REVISION

DATE

1

1975

2

2001

3

2010

RESIDENTIAL DRIVEWAY

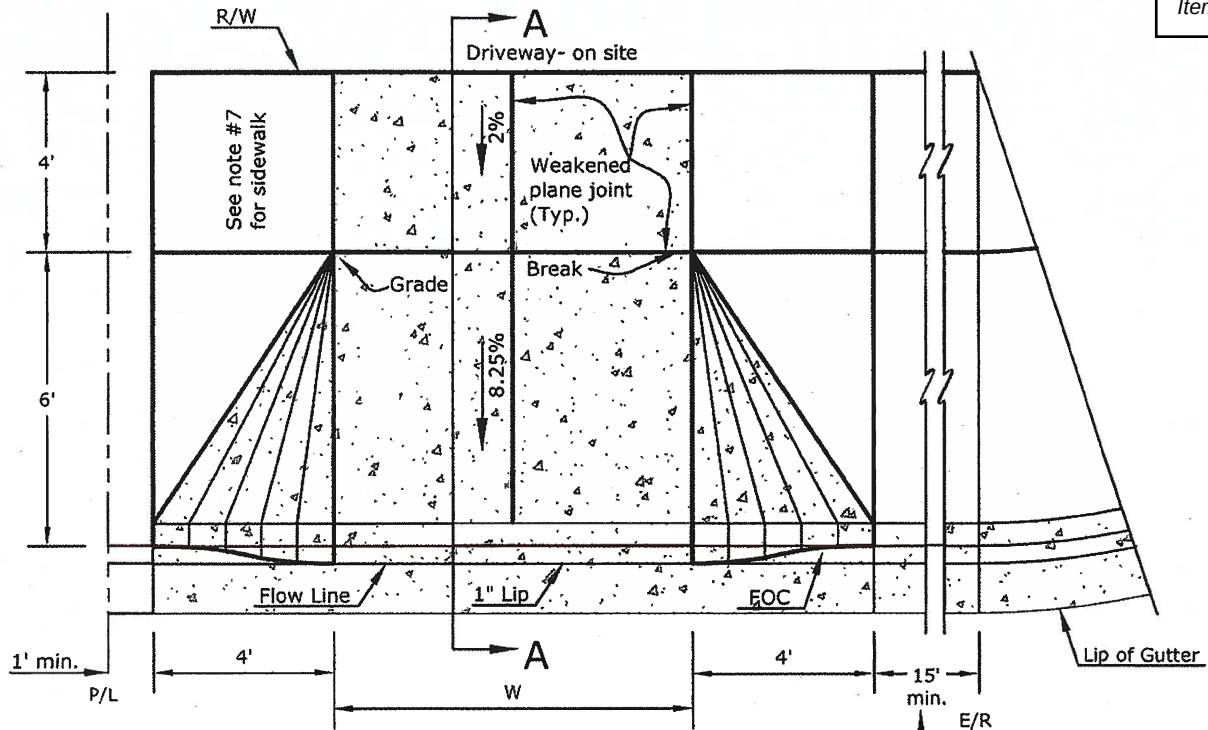
APPROVED BY:

3

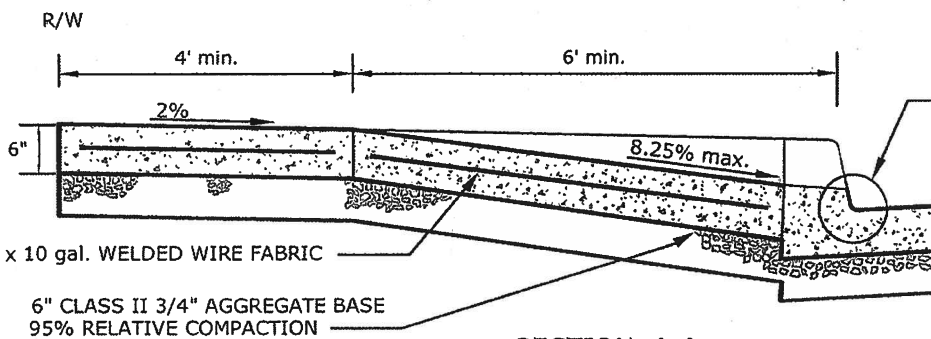
PUBLIC WORKS DIRECTOR / CITY ENGINEER RCE No. 40283

DATE : 6/15/10

SHEET 1 OF 1



PLAN



SECTION A-A

NOTES:

- Score lines shall be $\frac{1}{4}$ inch deep.
- Use Portland Cement Concrete containing not less than 564 lbs. of Type I or I/II Portland Cement per cubic yard with a compressive strength of not less than 3000 psi. at 28 days, with a medium broom finish min.
- Driveway locations shall be approved by the City Engineer.
- The minimum spacing between driveways serving the same parcel shall be 22 feet (edge to edge).
- Access to developed site shall be maintained.
- Subject to Standard Drawing No. 405 as it relates to sight distance.
- For industrial driveway see sidewalk transition Standard Drawing No.436, option 5 or 6.
- For commercial driveway see sidewalk transition Standard Drawing No.436, option 4.
- Approaches under 33' in width shall be scored 1" deep at center of approach and for approaches 33' or more in width shall be scored 1" deep at 1/3 lines.
- The sidewalk within the radius return shall be scored at the break line.

DRIVEWAY TYPE	W (ft)
Commercial two-way	36
Commercial one-way	20
Industrial two-way	32
Industrial one-way	20

NOT TO SCALE

CITY OF MILPITAS, ENGINEERING DIVISION

STANDARD DRAWING
NO. 432

REVISION

DATE

COMMERCIAL/INDUSTRIAL
DRIVEWAY WITH FLARES

DATE : 6/15/10

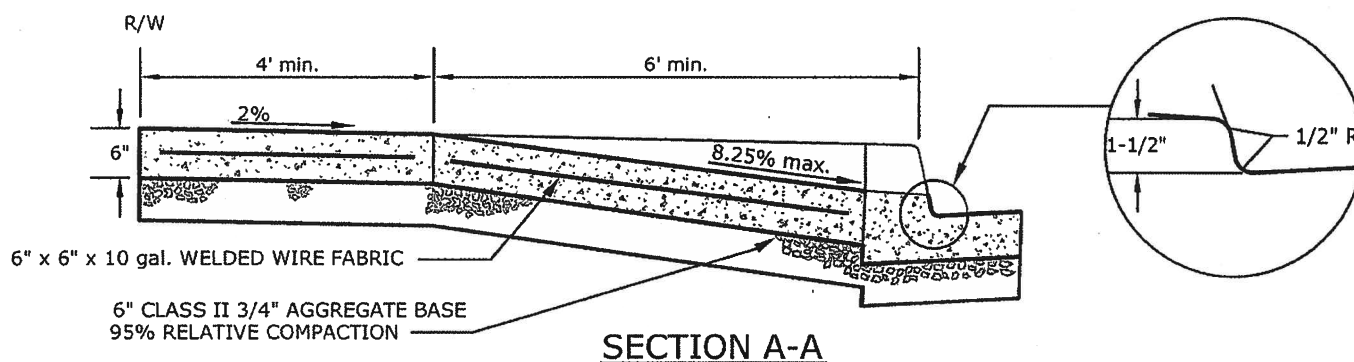
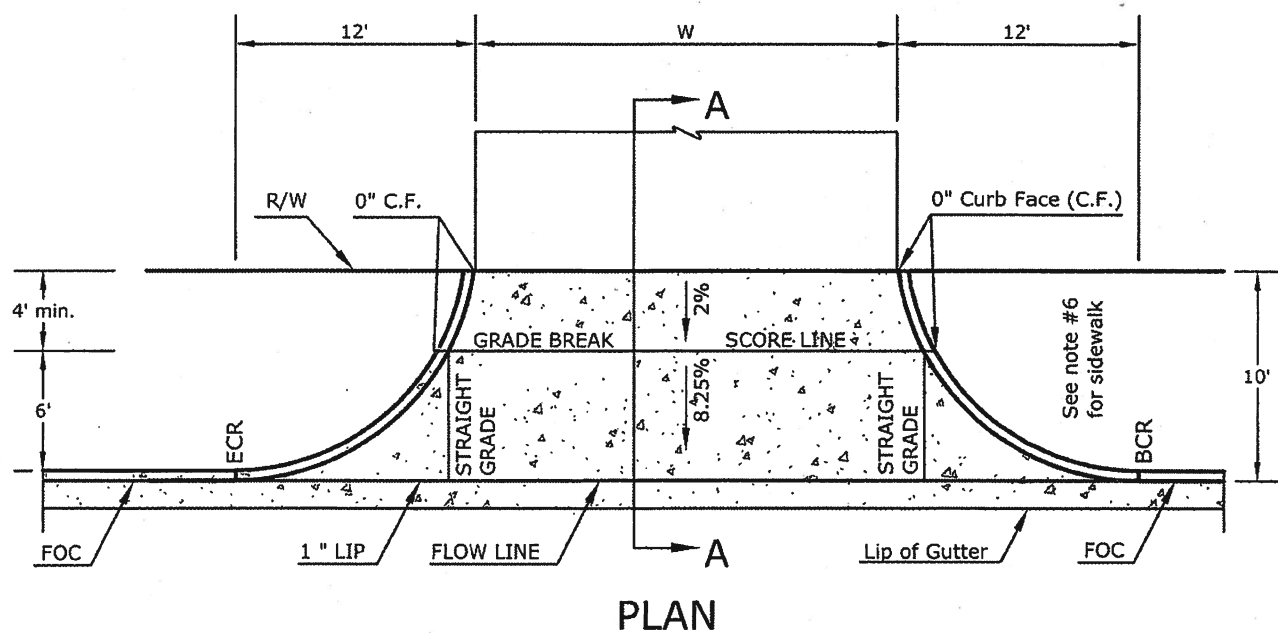
SHEET 1 OF

206

3

APPROVED BY:

PUBLIC WORKS DIRECTOR / CITY ENGINEER RCE No. 40283

**NOTES:**

- Score lines shall be $\frac{1}{4}$ inch deep.
- Use Portland Cement Concrete containing not less than 564 lbs. of Type I or I/II Portland Cement per cubic yard with a compressive strength of not less than 3000 psi. at 28 days, with a medium broom finish min.
- Driveway locations shall be approved by the City Engineer.
- The minimum spacing between driveways serving the same parcel shall be 22 feet (edge to edge).
- Access to developed site shall be maintained.
- For industrial driveway see sidewalk transition Standard Drawing No.436, option 2 or 3.
- For commercial driveway see sidewalk transition Standard Drawing No.436, option 1.
- Approaches under 33' in width shall be scored 1" deep at center of approach and for approaches 33' or more in width shall be scored 1" deep at 1/3 lines.
- The sidewalk within the radius return shall be scored at the break line.
- Stop signs may be required with this type of driveway approach.

DRIVEWAY TYPE	W (ft)
Commercial two-way	36
Commercial one-way	20
Industrial two-way	32
Industrial one-way	20

NOT TO SCALE

CITY OF MILPITAS, ENGINEERING DIVISION

STANDARD DRAWING
NO. 434

REVISION DATE

①

2000

②

2001

③

2010

COMMERCIAL/INDUSTRIAL
DRIVEWAY WITH CURB RETURN

③

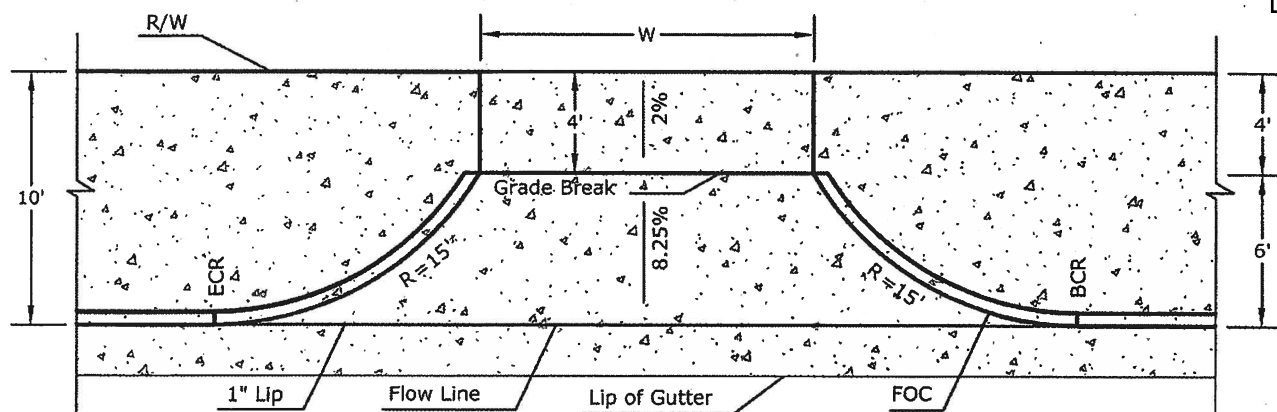
APPROVED BY:

PUBLIC WORKS DIRECTOR / CITY ENGINEER RCE No. 40283

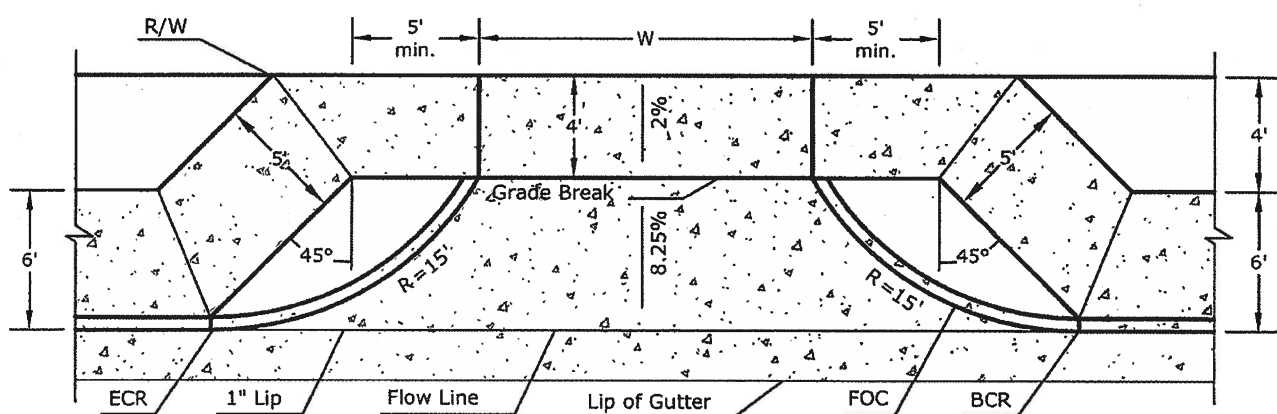
DATE : 6/15/10

SHEET 1 OF

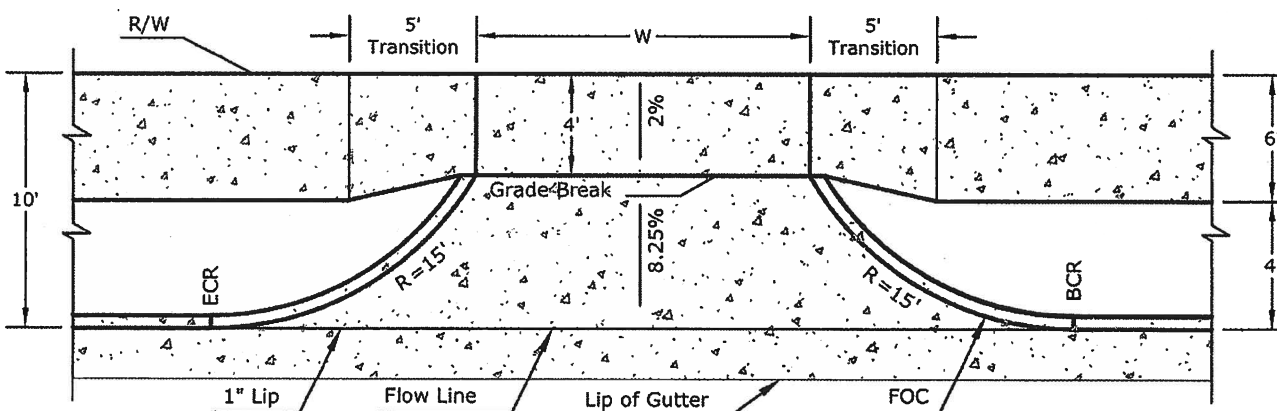
207



OPTION 1: 10' Sidewalk adjacent to curb



OPTION 2: 6' Sidewalk adjacent to curb



OPTION 3: 6' Sidewalk separated from curb

NOT TO SCALE

CITY OF MILPITAS, ENGINEERING DIVISION

STANDARD DRAWING
NO. 436

REVISION

DATE

SIDEWALK TRANSITIONS
OVER DRIVEWAYS

DATE : 6/15/10

1

1991

2

2001

3

2010

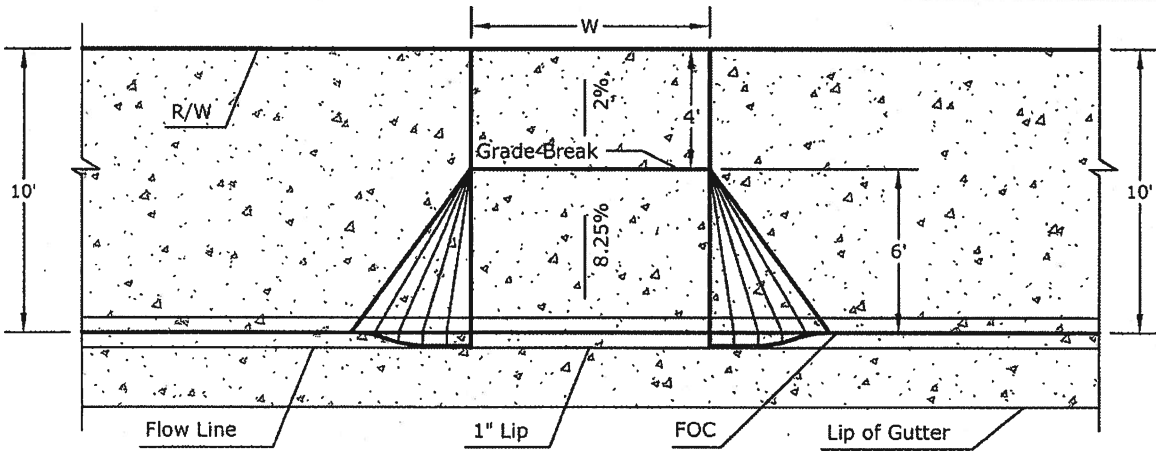
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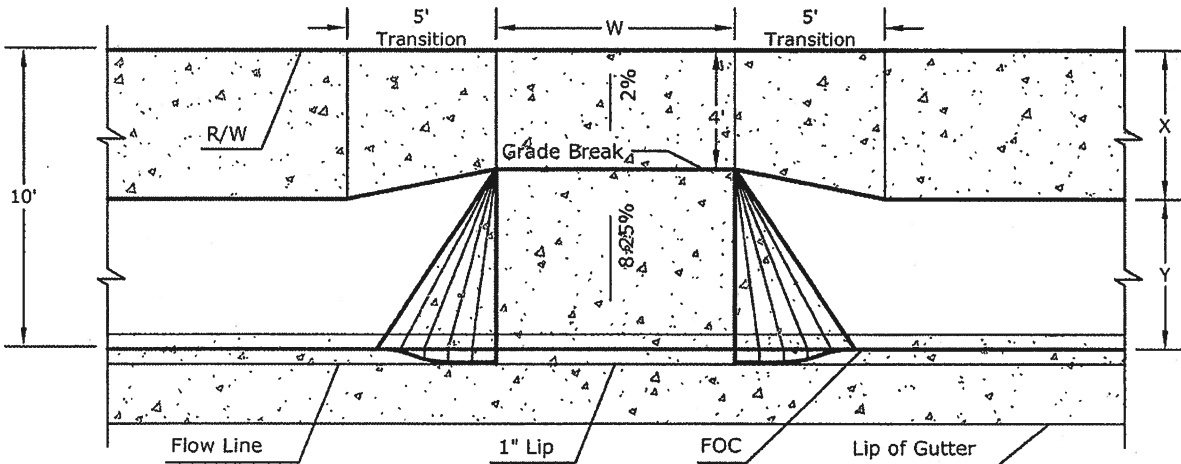
PUBLIC WORKS DIRECTOR CITY ENGINEER RCE No. 40283

SHEET 1 OF

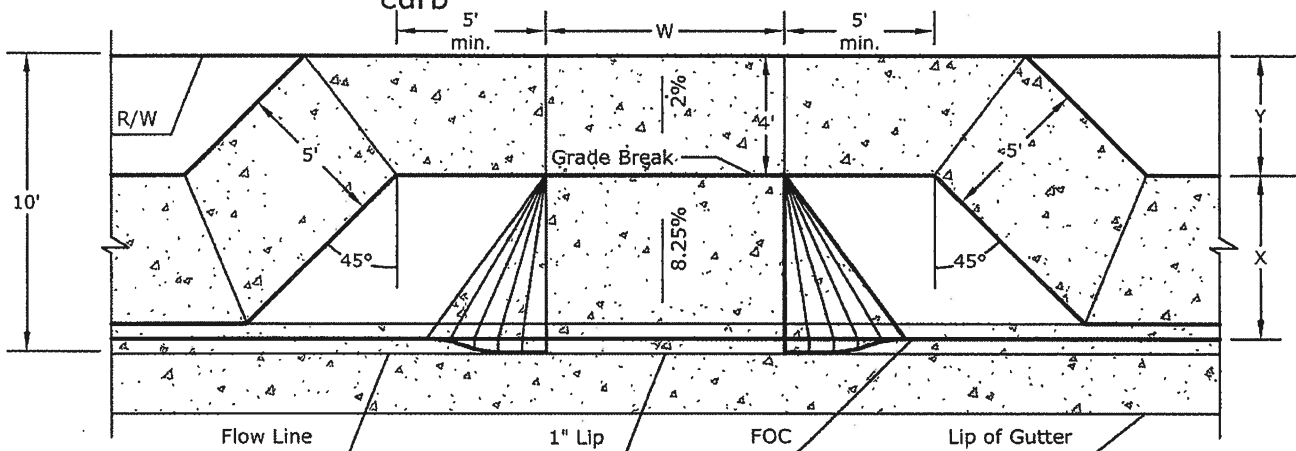
208



OPTION 4: 10' Sidewalk adjacent to curb



OPTION 5: 5' Sidewalk separated from curb



NOT TO SCALE

OPTION 6: Sidewalk adjacent to curb

	X	Y
Residential	5'	5'
Industrial	6'	4'

CITY OF MILPITAS, ENGINEERING DIVISION

STANDARD DRAWING

REVISION

DATE

SIDEWALK TRANSITIONS OVER DRIVEWAYS

NO. 436

DATE : 6/15/10

SHEET 2 OF 2

1

1991

2

2001

3

2010

3

APPROVED BY:

PUBLIC WORKS DIRECTOR / CITY ENGINEER RCE No. 40283

POST MILES	ROUTE	COUNTY	DIST	TOTAL PROJECT	SHEET TOTAL	SHEET NO.

Removal

REGISTERED CIVIL ENGINEER

May 31, 2018

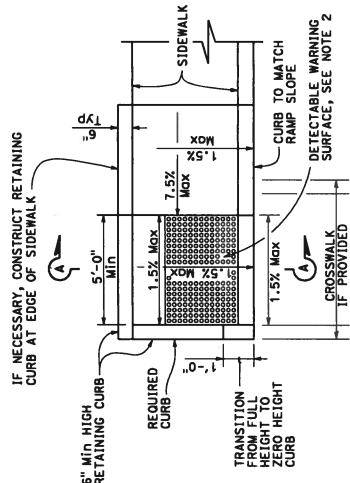
PLANS APPROVAL DATE

THE STATE OF CALIFORNIA AND ITS OFFICERS
 HEREBY CERTIFY THAT THE ACCURACY OF THE COMPLETION OF EXHIBIT
 COPIES OF THIS PLAN SHEET.

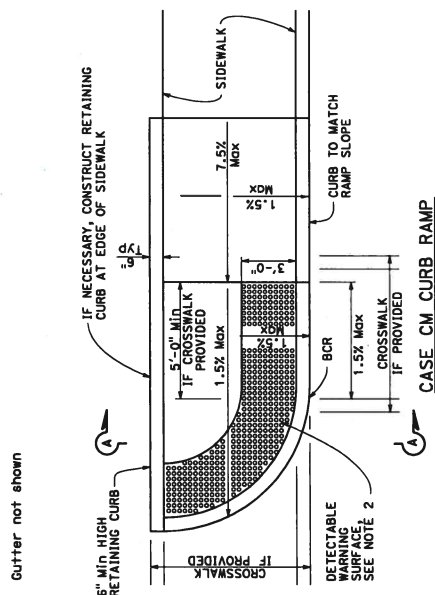
REBECCA LYNN BERRY
 PROFESSIONAL ENGINEER
 LICENSE NO. 55415
 CIVIL
 EXPIRES 12-31-19
 STATE OF CALIFORNIA

NOTES:

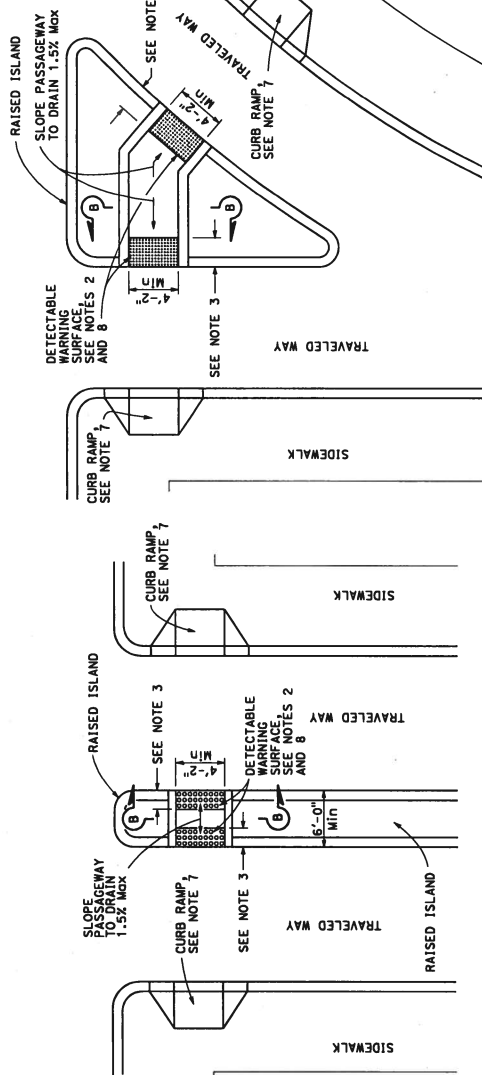
1. Sidewalk, ramp and passeway thickness, $\frac{3}{4}$ " shall be $\frac{3}{16}$ " minimum.
2. For details of detectable warning surfaces, see Standard Plan A68A.
3. Where an island passeway length is greater than or equal to 8'-0", but less than 10'-0", the detectable warning surface shall be 2'-0" wide and 2'-0" deep. Where an island passeway length is greater than or equal to 8'-0", each detectable warning surface shall extend the full width of the passeway length. Detectable warning surfaces shall extend the full width of the island passeway except a maximum gap of 1' is allowed on each side of the passeway.
4. The adjacent surfaces at transitions at curb ramps, sidewalks, gutters, and streets shall be at the same level.
5. Utility pit boxes, manholes, vaults and all other facilities within the boundaries of the curb ramp shall be flush with the curb ramp surface or relocated or adjusted to grade by the owner prior to or in conjunction with, curb ramp construction.
6. Detectable warning surface may have to be cut to remove utility covers while maintaining detectable warning width and depth.
7. For additional curb ramp details, see Standard Plan A68A.
8. The detectable warning surface will be a rectangle face of curb, unless modified in the Project Plans.



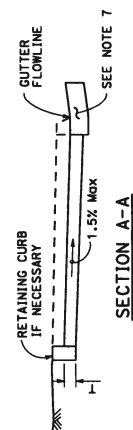
CASE CH CURB RAMP



CASE CM CURB RAMP

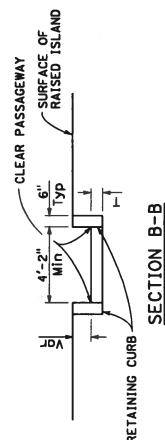


TYPE A PASSAGEWAY



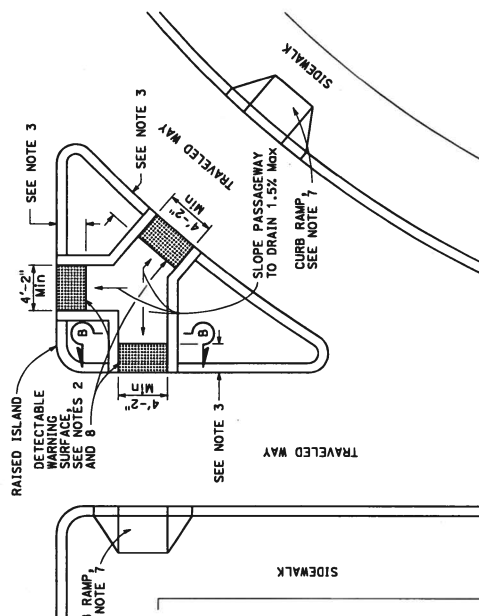
SECTION A-A

TYPE B PASSAGEWAY



SECTION B-B

TYPE C PASSAGEWAY



CURB RAMP AND ISLAND PASSAGEWAY DETAILS

NO SCALE



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Accepting and Authorizing the City Manager to Execute a Sole Source Purchase for Procurement of six (6) LIFEPAK 15 V4 Monitor/Defibrillators from Stryker Sales Corporation in the Amount of \$220,107.43, Net of Credit (Staff Contact: Brian Sherrard, Fire Chief, 408-586-2811; and Kenju Suzuki, EMS Battalion Chief, 408-586-2824)
Category:	Consent Calendar-Public Safety
Meeting Date:	10/4/2022
	<u>Recommendation:</u> Adopt a Resolution accepting and authorizing the City Manager to execute the Sole Source Purchase of six (6) LIFEPAK 15 V4 Monitor/Defibrillators with Stryker Sales Corporation in the Amount of \$220,107.43, Net of Credit.

BACKGROUND:

LIFEPAK 15 V4 Monitors/Defibrillators are used to revive patients in sudden cardiac arrest. Due to the age of the current models in the fleet, the Fire Department has a need to replace six (6) LIFEPAK-15 Cardiac Monitors/Defibrillators. Stryker no longer provides replacement parts for the LIFEPAK 15 V1/V2 Monitors/Defibrillators which the Milpitas Fire Department currently uses. In order to fund this replacement, as part of the FY 2022-23 Operating Budget, Council approved funds for six (6) LIFEPAK 15 V4 Monitors/Defibrillators.

The Municipal Code Section I-2-3.06 titled Sole Source Procurement provides for a contract to be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination and the period of the sole source approval shall be placed in the contract file.

ANALYSIS:

Stryker is the sole-source provider in the Hospital (hospitals and hospital-owned facilities), Emergency Response Services and Emergency Response Training (paramedics, professional and volunteer fire) markets in the U.S. and Canada for the LIFEPAK 15 V4 Monitor/Defibrillators and accessories used by the Milpitas Fire Department. Stryker does not authorize any third party to sell these products or services in these markets.

Consistent with the City's Municipal Code, the Purchasing Agent has determined that Stryker is the sole source provider of the LIFEPAK 15 monitors/defibrillators. Stryker will provide a trade-in credit of \$39,000 for the outdated equipment replacement. The total not-to-exceed amount for six (6) LIFEPAK 15 V4 Monitor/Defibrillators is \$220,107.43, and includes a one-time \$39,000.00 credit to trade in six (6) remaining Stryker LP15V1/V2 Cardiac Monitor/Defibrillators.

POLICY ALTERNATIVE(S):

Alternative 1: Elect to not purchase the six (6) LIFEPAK 15 V4 Monitors/Defibrillators.

Pros: The City would not expend \$220,107.043 for the LIFEPAK 15 V4 Monitor/Defibrillators

Cons: Older versions of the LIFEPAK 15 Monitors/Defibrillators would continue to be used until they breakdown. Parts for the older versions are no longer provided by Stryker.

Reason for Not Recommending: LIFEPAK 15 V4 Monitors/Defibrillators are used to revive patients in sudden cardiac arrest. This equipment is vital to the operations of the Milpitas Fire Department as it has a direct impact on patient care and survivability.

FISCAL IMPACT:

The six LIFEPAK 15 V4 monitor/defibrillators cost \$220,107.43, net of credit. Funds for these products were approved by City Council and are available from the Fire Department budget.

California Environmental Quality Act (CEQA):

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

RECOMMENDATION:

Adopt a resolution accepting and authorizing the City Manager to execute the Sole Source Purchase for six (6) LIFEPAK 15 V4 Monitor/Defibrillators from Stryker Sales Corporation.

Attachment(s):

1. Agreement between City of Milpitas and Stryker for six (6) LIFEPAK 15 V4 Monitor/Defibrillators with the not-to-exceed amount of \$220,107.43
2. Sole Source Resolution
3. June 7, 2022 Sole Source Purchase Order
4. Current Sole Source Request

Item C 9 Attachment 1

Agreement between City of Milpitas and Stryker for six (6) LIFEPAK 15 V4 Monitor/Defibrillators with the not-to-exceed amount of \$220,107.43

To be distributed separately

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
ACCEPTING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE
SOLE SOURCE PURCHASE OF SIX LIFEPAK 15
MONITOR/DEFIBRILLATORS FROM STRYKER SALES CORPORATION;**

WHEREAS, Section I-2-3.06 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source.; and

WHEREAS, Stryker is the sole-source provider in the Hospital (hospitals and hospital-owned facilities), Emergency Response Services and Emergency Response Training (paramedics, professional and volunteer fire) markets in the U.S. and Canada for the LIFEPAK 15 V4 Monitor/Defibrillators and accessories used by the Milpitas Fire Department; and

WHEREAS, due to age of the current models in the fleet, the Fire Department has a need for six (6) LIFEPAK-15 Cardiac Monitor/Defibrillators that are compatible with the Santa Clara County Emergency Management System; and

WHEREAS, the total not-to-exceed amount of new equipment is \$220,107.43, and includes a one-time \$39,000.00 credit to trade in six (6) remaining Stryker LP15V1/V2 Cardiac Monitor/Defibrillators; and

WHEREAS, as part of the FY 2022-23 Fire Capital Outlay and Operating Budget Council approved funds for these six (6) LIFEPAK 15 V4 Monitor/Defibrillators; and

WHEREAS, after conducting a good faith review of the available sources and pursuant to Milpitas Municipal Section I-2-3.06, the City's Purchasing Agent has determined that Stryker is the only source for the LIFEPAK-15 V4 Cardiac Monitor/Defibrillators that meets the City's requirements.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby approves Stryker Sales Corporation as the sole source provider for the procurement of six (6) LIFEPAK-15 Cardiac Monitor/Defibrillators pursuant to Milpitas Municipal Code Section I-2-3.06 (Sole Source Procurement).
3. The City Council hereby approves the purchase of the equipment from Stryker Sales Corporation and authorizes the City Manager, or his designee, to execute the sole source purchase in the amount of \$220,107.43.

PASSED AND ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, Acting City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

LP15 V1/V2 trade in

Quote Number: 10554308

Remit to: **Stryker Medical**

P.O. Box 93308

Chicago, IL 60673-3308

Version: 1

Prepared For: MILPITAS FIRE DEPT

Rep: Antonella Bondi

Attn:

Email: antonella.bondi@stryker.com

Phone Number:

Quote Date: 07/12/2022

Expiration Date: 09/30/2022

Delivery Address

Name: MILPITAS FIRE DEPT

Account #: 1278014

Address: 777 S MAIN ST

MILPITAS

California 95035-5322

End User - Shipping - Billing

Name: MILPITAS FIRE DEPT

Account #: 1278014

Address: 777 S MAIN ST

MILPITAS

California 95035-5322

Bill To Account

Name: CITY OF MILPITAS

Account #: 1278013

Address: 455 E CALAVERAS BLVD

MILPITAS

California 95035-5411

Equipment Products:

#	Product	Description	Qty	Sell Price	Total
1.0	99577-001958	LIFEPAK 15 V4 Monitor/Defib - Manual & AED, Trending, Noninvasive Pacing, SpO2, SpCO, NIBP, 12-Lead ECG, EtCO2, Temp, BT. Incl at N/C: 2 pr QC Electrodes (11996-000091) & 1 Test Load (21330-001365) per device, 1 Svc Manual CD (26500-003612) per order	6	\$34,661.30	\$207,967.80
2.0	41577-000290	Ship Kit -QUIK-COMBO Therapy Cable; 2 rolls100mm Paper; RC-4, Patient Cable, 4ft.; NIBP Hose, Coiled; NIBP Cuff, Reusable, adult; 12-Lead ECG Cable, 4-Wire Limb Leads, 5ft; 12-Lead ECG Cable, 6-Wire Precordial attachment; Temperature Adapter Cable, 5ft	6	\$0.00	\$0.00
3.0	21330-001176	LP 15 Lithium-ion Battery 5.7 amp hrs	18	\$449.65	\$8,093.70
4.0	11141-000115	REDI-CHARGE Base (power cord not included)	6	\$1,459.45	\$8,756.70
5.0	11140-000015	AC power cord	6	\$75.65	\$453.90
6.0	11140-000052	LP15 REDI-CHARGE Adapter Tray	6	\$198.05	\$1,188.30
7.0	11171-000049	Masimo Rainbow DCI Adult Reusable SpO2, SpCO, SpMet Sensor, 3 FT. For use with RC Patient Cable.	6	\$582.25	\$3,493.50
8.0	11171-000050	Masimo Rainbow DCIP Pediatric Reusable SpO2, SpCO, SpMet Sensor, 3 FT. For use with RC Patient Cable.	6	\$640.90	\$3,845.40
9.0	11160-000011	NIBP Cuff-Reusable, Infant	6	\$21.25	\$127.50
10.0	11160-000013	NIBP Cuff-Reusable, Child	6	\$23.80	\$142.80
11.0	11160-000017	NIBP Cuff -Reusable, Large Adult	6	\$33.15	\$198.90
12.0	11160-000019	NIBP Cuff-Reusable, Adult X Large	6	\$46.75	\$280.50
13.0	11577-000002	LIFEPAK 15 Basic carry case w/right & left pouches; shoulder strap (11577-000001) included at no additional charge when case ordered with a LIFEPAK 15 device	6	\$306.85	\$1,841.10



Item # C9.

LP15 V1/V2 trade in

Quote Number: 10554308

Remit to: **Stryker Medical**

Version: 1

P.O. Box 93308

Prepared For: MILPITAS FIRE DEPT

Chicago, IL 60673-3308

Attn:

Rep: Antonella Bondi

Email: antonella.bondi@stryker.com

Phone Number:

Quote Date: 07/12/2022

Expiration Date: 09/30/2022

#	Product	Description	Qty	Sell Price	Total
14.0	11220-000028	LIFEPAK 15 Carry case top pouch	6	\$55.25	\$331.50
15.0	11260-000039	LIFEPAK 15 Carry case back pouch	6	\$79.05	\$474.30
16.0	11996-000359	Temperature Sensor, Skin Probe, High Dielectric, Disposable (box of 20)	6	\$132.60	\$795.60
Equipment Total:					\$237,991.50

Trade In Credit:

Product	Description	Qty	Credit Ea.	Total Credit
TR-15V1V2-LP15	TRADE-IN-STRYKER LP15V1/V2 TOWARDS PURCHASE OF LIFEPAK 15	6	-\$6,500.00	-\$39,000.00

Price Totals:

Estimated Sales Tax (9.375%):	\$18,655.45
Freight/Shipping:	\$2,460.48
Grand Total:	\$220,107.43

Prices: In effect for 30 days

Terms: Net 30 Days

Contact your local Sales Representative for more information about our flexible payment options.

Capital Terms and Conditions:

Deal Consummation: This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule. Confidentiality Notice: Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker's prior written approval, except as may be requested by law or by lawful order of any applicable government agency. A copy of Stryker Medical's Acute Care capital terms and conditions can be found at https://techweb.stryker.com/Terms_Conditions/index.html. A copy of Stryker Medical's Emergency Care capital terms and conditions can be found at <https://www.strykeremergencycare.com/terms>.



CITY OF MILPITAS SOLE SOURCE OR SOLE BRAND (STANDARDIZATION) REQUEST

**THIS FORM MUST BE COMPLETED AND APPROVED
PRIOR TO ANY PROCUREMENT**

When a request is made for a sole source procurement or to restrict procurement to a specific brand (standardization) for the acquisition of supplies, equipment and materials or services (except for consultant services or contracts with other governmental agencies), as applicable, the requesting department must complete this form consistent with [Section I-2-3.06 - Sole Source Procurement](#) or [Section I-2-3.14 - Standardization](#).

Per the aforementioned Municipal Code section, a sole source contract is authorized when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. The detailed information you are providing will facilitate such a determination.

Per the aforementioned Municipal Code section, a standardization of supplies, materials or equipment, including information and communication technology products and services and subsequent sole brand procurement is authorized, when the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the City, or that cost savings have been demonstrated. Among the factors that may be considered in determining to standardize on a single brand or trade name are that:

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

This form is not necessary for contracting for professional services or contracting with other governmental agencies.

Please answer in the space provided, or in an attachment address by specific reference, each question listed below in your justification. Be sure to answer each part of each question as each must be addressed; no response can be not applicable. Failure to respond fully to any of the questions may result in delay or rejection of the request due to inadequate justification. If additional information is necessary, please attach additional page(s) and/or documents, as needed.

1. This is a request for a (circle one) **X Sole Source** Sole Brand exception.
2. Using appropriate detail, including brand name and model number, **briefly** describe the product you wish to procure. In the case of a general service use enough detail to clearly describe to someone not familiar with your department's operation what you are procuring.

If it is your assertion that the manufacturer or distributor is the only authorized source in the Bay Area, Northern California; or whatever the claim is; please substantiate that with a letter from the manufacturer or distributor. The letter must be on their stationary but can be sent via email. Attach a copy to this form.

This is a request for six (6) LIFEPAK 15 V4 Monitor/Defibrillators with accessories that costs \$237,991.50, however with the trade-in value of the old equipment Milpitas Fire receives a credit of -\$39,000.00, which calculates to a total cost of \$220,107.43.

Stryker is the sole-source provider in the Hospital (hospitals and hospital-owned facilities), Emergency Response Services and Emergency Response Training (paramedics, professional and volunteer fire) markets in the U.S. and Canada for the following products:

- New LIFEPAK® 15 monitor/defibrillators
- New LIFEPAK 20e defibrillator/monitors
- New LIFEPAK CR2 automated external defibrillators
- New LIFEPAK 1000 automated external defibrillators
- New LUCAS® chest compression system
- TrueCPR® coaching devices
- CODE-STAT™ data review software and service

Stryker is the sole-source provider in all markets for the following products and services:

- RELITM (Refurbished Equipment from the Lifesaving Innovators) devices
- LIFENET® system and related software
- Factory-authorized inspection and repair services which include repair parts, upgrades, inspections and repairs
- HealthEMS® Software
- HomeSolutions.net® Software
- ACLS (non-clinical) LIFEPAK defibrillator/monitors
- Heart Safe SolutionSM Government Campus Solution
- MultiTech 4G and Titan III gateways

Stryker is also the sole-source distributor of the following products for EMS customers in the U.S. and Canadian markets:

- McGRATH™ MAC EMS video laryngoscope Stryker does not authorize any third parties

to sell these products or services in the markets listed above. We will not fulfill orders placed by non-authorized businesses seeking to resell our products or services.

See attached sole source 2022 letter from Stryker.

3. Please provide the total not-to-exceed amount of the purchase and/or agreement/contract as well as the requested term. (if buying software, the City's standard term is five years)

Total Cost: \$ **\$220,107.43**

Term: N/A supply contract

Detailed cost breakdown explanation per year:

Year 1: \$220,107.43

4. For goods: What are the unique performance features of the product/brand requested that are not available in any other product/brand? For services: What unique qualifications, rights, degrees, certifications, licenses and/or experience does this vendor possess?

Stryker is the sole-source provider in the Hospital (hospitals and hospital-owned facilities), Emergency Response Services and Emergency Response Training (paramedics, professional and volunteer fire) markets in the U.S. and Canada for the both products and maintenance.

5. What other products/services have been examined and rejected, and why? (Please provide a specific meaningful explanation, one vendor and one feature at a time. For products be sure to clearly identify the product by name and model number and **include the name, address, email, and telephone number of the company representative whose product you tested.)**

There are currently three Cardiac Monitors available in the US. The other two brands had multiple limiting and therefore undesirable features. For example:

The Philips Monitor is not able to monitor Carbon Monoxide poisoning. Philips energy dosage maximum is just 150 joules when using the AED component and 200 joules when using manual delivery.

The Zoll X series defibrillator's energy delivery is also limited to 200 joules. The X series cannot provide interpretive 12 leads for patients under 18 years of age – which is the definitive tool needed for treating cardiac patients! This would also create a different standard of care for this vulnerable group. Milpitas Fire's mission is to treat all of its citizens with the same standard of patient care.

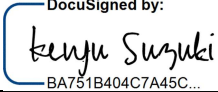
Purchasing any other product would represent a decrease in the current standard of patient care.

Finally, replacing our current units with the same brand means that all of the expensive infrastructure and recently awarded maintenance agreement that we have already invested in will not go to waste. Many of our adjunct equipment such as capnography, SpO2 and defibrillator attachments are specific to the LP15 monitors. Our training, procedures and protocols are written specifically for these units and the way that they function. Staying standardized on this brand means that all of this can remain in place and no expense in terms of staff time (retraining, rewriting procedures, etc) will be incurred with the new purchase.

6. If justification is based on matching and/or intermixing with existing equipment (standardization or sole brand only – (sole brand may only be used by authority of the City Council)), list the quantity, manufacturer, brand, and model of the existing equipment, and identify measurable cost savings consistent with the sole brand requirements identified on page one of the request form (attach calculations as necessary).

I HEREBY CERTIFY THAT:

1. I have read and understand the City's requirements for competitive bidding, as well as the criteria for justification for sole source and sole brand procurements.
2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment/service.
3. There is validity as to the information contained herein justifying my request for sole source or sole brand procurement and meeting the City's criteria.
4. A sole source or sole brand procurement in this case would withstand a possible audit or a vendor's protest.

Requestor: Kenju Suzuki  Date: Aug-03-2022

Department Head: Brian Sherrard  Date: Aug-03-2022

PURCHASING DIVISION USE ONLY:

APPROVED: Yes No

Purchasing Agent: _____ Date: _____

Purchasing Agent's Written Determination:

SOLE SOURCE OR SOLE BRAND REQUEST

A. OVERVIEW

Purchasing recognizes that departments often invest a great deal of time and effort in selecting a source or brand, prior to submitting a requisition to Purchasing. Even though the departmental review process prior to the submittal of a requisition may be sound, it is highly recommended to quickly engage with Purchasing as soon and early in the process as possible to ensure all documentation and justifications for the request are consistent with the Municipal Code.

Likewise, Purchasing can be an effective partner in a competitive review process given adequate time and involvement in your requirement definition.

In an effort to expedite sole source or sole brand requisitions through Purchasing, you are directed to review the Sole Source or Sole Brand Request form herein. If the Department feels the request meets the criteria, follow the instructions in filling out the form and attach it to the requisition. After review, if Purchasing concurs with your sole source or sole brand justification, the requisition may be expedited without the competitive solicitation requirements.

This is an internal City review process. Departments are directed to use discretion in their discussion with vendors so as to not compromise any competitive advantage that Purchasing may utilize; in the event the sole source or sole brand justification is rejected. Rather than merely a shift of the review burden, this process acknowledges the significant effort a department may undertake when identifying a vendor or brand and provides you with the method by which to make requisitioning efforts more efficient adhering to the City's Purchasing Ordinance.

In order for Purchasing to accept a request for sole source/sole brand, the certification form referenced is made a part of the Purchasing Agent's written determination as provided by the Municipal Code must be signed by the Department Head. The completed form will remain on file for audit purposes.

Sole Source Requests Over \$100,000

Sole Source requests over \$100,000 require submission of an Agenda Report [Sample - Sole Source Agenda Report](#) and approval by City Council and require submission of a resolution as in the [Sample - Sole Source Resolution](#). If you are making a second sole source purchase, over \$100,000, within the five-year life of the original sole source purchase you are still required to submit an AR to City Council, and at a minimum, the report should confirm the findings in the prior sole source resolution are still accurate and that nothing has changed in the marketplace or elsewhere. If anything has changed, then a new resolution is required. If

nothing has changed, then the Department can rely on the prior resolution but should include language in the AR indicating that all previous findings and conclusions are still accurate, and staff is not aware of any new information that would change those findings or conclusions in the prior sole source resolution.

B. PROCEDURE Sole source or sole brand procurements are an exception to competitive solicitation requirements and, therefore, require a detailed justification. In processing sole source or sole brand requests for supplies, equipment and/or services (except for consultant services or contracts with other governmental agencies), Purchasing adheres to and is governed by the principles set forth in City of [Milpitas Municipal Code Section I-2-3.06 - Sole Source Procurement](#) or [Section I-2-3.14 - Standardization](#) as approved by the City Council.

If the requesting Department is requesting a particular vendor, brand or product, staff must make this fact clear on your requisition. If approved, the request will then be restrictive and non-competitive and will fall into a sole source or sole brand category.

Such a request should not be made unless Department staff is confident that the request is reasonable and appropriately justified to meet the City's requirements and withstand any possible audit or scrutiny. The City's requirements and the format for submitting such requests are contained herein.

The following factors DO NOT apply to sole source requests and should not be included in any sole source and/or sole brand justification request. They will not be considered and only tend to confuse the evaluation process and delay the procurement.

1. Personal preference or experience with or for a particular product or vendor.
2. Cost, vendor performance, and/or local service (these are generally considered award factors in competitive bidding).
3. Features which exceed the minimum department requirements.
4. Explanation of the need and/or basic use for the equipment, unless the information relates to a request for "unique factors" (refer to question three from the Sole Source/Sole Brand Request form). In other words, it is not appropriate to only state the Department is requesting a specific tree trimmer so staff can trim trees, instead explain why this particular trimmer with these exact performance specifications is the only one that will meet the Department's need(s).
5. A request for "no substitution" submitted without justification. This is just a sole source or sole brand request without justification and will be rejected

May 2022

Stryker is the sole-source provider in the Hospital (hospitals and hospital-owned facilities), Emergency Response Services and Emergency Response Training (paramedics, professional and volunteer fire) markets in the U.S. and Canada for the following products:

- New LIFEPAK® 15 monitor/defibrillator
- New LIFEPAK 20e defibrillator/monitors
- New LIFEPAK CR2 automated external defibrillators
- New LIFEPAK 1000 automated external defibrillators
- New LUCAS® chest compression system
- TrueCPR® coaching devices
- CODE-STAT™ data review software and service

Stryker is the sole-source provider in all markets for the following products and services:

- RELI™ (Refurbished Equipment from the Lifesaving Innovators) devices
- LIFENET® system and related software
- Factory-authorized inspection and repair services which include repair parts, upgrades, inspections and repairs
- HealthEMS® Software
- HomeSolutions.net® Software
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- MultiTech 4G and Titan III gateways

Stryker is also the sole-source distributor of the following products for EMS customers in the U.S. and Canadian markets:

- McGRATH™ MAC EMS video laryngoscope

Stryker does not authorize any third parties to sell these products or services in the markets listed above. We will not fulfill orders placed by non-authorized businesses seeking to resell our products or services. If you have questions please feel free to contact your local Stryker customer service representative at 800.442.1142.

Sincerely,



Matt Van Der Wende, Senior Director, Americas S

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GDR 3321967_N

Stryker or its affiliated entities own, use, or have applied for the following trademarks or services marks: LIFEPAK, LUCAS, TrueCPR, CODE-STAT, RELI, LIFENET, HealthEMS, HomeSolutions.net, Heart Safe Solution, Stryker. All other trademarks are trademarks of their respective owners or holders. The absence of a product, feature, or service name, or logo from this list does not constitute a waiver of Stryker's trademark or other intellectual property rights concerning that name or logo.

Emergency Care

11811 Willows Road NE, Redmond, WA 98052 USA | P +1 425 867 4000 | Toll-free +1 800 442 1142 | stryker.com



Item # C9.

LP15 V1/V2 trade in

Quote Number: 10554308

Remit to:

Stryker Medical

P.O. Box 93308

Chicago, IL 60673-3308

Version: 1

Prepared For: MILPITAS FIRE DEPT

Rep:

Antonella Bondi

Attn:

Email:

antonella.bondi@stryker.com

Phone Number:

Quote Date: 07/12/2022

Expiration Date: 09/30/2022

Delivery Address

Name: MILPITAS FIRE DEPT

Account #: 1278014

Address: 777 S MAIN ST

MILPITAS

California 95035-5322

End User - Shipping - Billing

Name: MILPITAS FIRE DEPT

Account #: 1278014

Address: 777 S MAIN ST

MILPITAS

California 95035-5322

Bill To Account

Name: CITY OF MILPITAS

Account #: 1278013

Address: 455 E CALAVERAS BLVD

MILPITAS

California 95035-5411

Equipment Products:

#	Product	Description	Qty	Sell Price	Total
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Version: 1

P.O. Box 93308

Prepared For: MILPITAS FIRE DEPT

Chicago, IL 60673-3308

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Quote Date: 07/12/2022

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Product	Description	Qty	Credit Ea.	Total Credit
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Deal Consummation: This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule. Confidentiality Notice: Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker's prior written approval, except as may be requested by law or by lawful order of any applicable government agency. A copy of Stryker Medical's Acute Care capital terms and conditions can be found at https://techweb.stryker.com/Terms_Conditions/index.html. A copy of Stryker Medical's Emergency Care capital terms and conditions can be found at <https://www.strykeremergencycare.com/terms>.

Certificate Of Completion

Envelope Id: FA50DE12A547469C92222421E1DBFF3E Status: Completed
 Subject: Please DocuSign: Sole Source Justification Form- Stryker LP15s 2022.docx, stryker sole source l...
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 Document Pages: 10 Signatures: 2 Envelope Originator:
 Certificate Pages: 5 Initials: 0 Natalie Livezey
 AutoNav: Enabled 455 E Calaveras Blvd
 Envelope Stamping: Enabled Milpitas, CA 95035
 Time Zone: (UTC-08:00) Pacific Time (US & Canada) nlivezey@milpitas.gov
 IP Address: 50.59.22.2

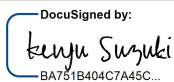
Record Tracking

Status: Original Holder: Natalie Livezey Location: DocuSign
 August 3, 2022 | 11:07 nlivezey@milpitas.gov

Signer Events

Kenju Suzuki
 ksuzuki@milpitas.gov
 Security Level: Email, Account Authentication
 (None)

Signature

DocuSigned by:

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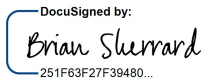
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Timestamp

Sent: August 3, 2022 | 11:13
 Viewed: August 3, 2022 | 11:19
 Signed: August 3, 2022 | 11:19

Electronic Record and Signature Disclosure:
 Accepted: August 3, 2022 | 11:19
 ID: 0539dbe6-e4a9-4d35-a3f4-f84b6997abbe

Brian Sherrard
 bsherrard@milpitas.gov
 Chief
 Security Level: Email, Account Authentication
 (None)

DocuSigned by:

 251F63F27F39480...

Signature Adoption: Pre-selected Style
 Using IP Address: 50.222.50.222

Sent: August 3, 2022 | 11:19
 Viewed: August 3, 2022 | 11:21
 Signed: August 3, 2022 | 11:21

Electronic Record and Signature Disclosure:
 Accepted: August 3, 2022 | 11:21
 ID: 1885bc6d-1381-4a15-aa63-026be913f053

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	August 3, 2022 11:13
Certified Delivered	Security Checked	August 3, 2022 11:21

Envelope Summary Events		Status	Timestamps	Item # C9.
Signing Complete		Security Checked	August 3, 2022 11:21	
Completed		Security Checked	August 3, 2022 11:21	
Payment Events		Status	Timestamps	
Electronic Record and Signature Disclosure				

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Carahsoft OBO City of Milpitas (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Carahsoft OBO City of Milpitas:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: mluu@ci.milpitas.ca.gov

To advise Carahsoft OBO City of Milpitas of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at mluu@ci.milpitas.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Carahsoft OBO City of Milpitas

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to mluu@ci.milpitas.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Carahsoft OBO City of Milpitas

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to mluu@ci.milpitas.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO City of Milpitas as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO City of Milpitas during the course of your relationship with Carahsoft OBO City of Milpitas.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize the City Manager to Execute a Contract with Colliers Parrish International Contract for Real Estate Services (Staff Contact: Alex Andrade, Director of Economic Development, 408-586-3046)
Category:	Consent Calendar-Community Development
Meeting Date:	10/4/2022
	<u>Recommendation:</u> Authorize the City Manager to execute a contract with Colliers Parrish International for real estate services related to the disposition of property located at 1432-1446 South Main Street, for a fee of four percent (4%) of the final gross sales price.

BACKGROUND:

At the September 28, 2021 Special City Council meeting, the City Council received a staff presentation on the guiding principles for the City-owned parcels located at 1432-1488 South Main Street. The City Council considered the possible development or disposition of the three parcels referred to as follows:

Parcel	Address	Ownership Entity
Parcel 1	1432-1446 South Main Street	Milpitas Housing Authority
Parcel 2	1452-1466 South Main Street	City of Milpitas
Parcel 3	1474-1488 South Main Street	City of Milpitas

The City Council made various statements in support of development and disposition of Parcel 1. City Councilmembers shared their interest in maximizing the value of the sale for future affordable housing opportunities, supporting homeownership and first-time buyers' program, expansion of affordable housing inventory, options for Sunnyhills residents in the future, and more transparent and equitable community engagement. In addition, some City Councilmembers expressed an interest in a mix of rental and ownership opportunities, supporting a mix of uses including non-profit organizations, favoring economic development activities, and the use of American Rescue Plan Act (ARPA) funds to assist with the potential of tiered compensation.

On December 7, 2021, the City Council received a staff report and presentation on Parcel 1 and further evaluation of Parcels 2 and 3. After the City Council received an update on stakeholder and community input (Meeting #1: Developers and Nonprofit Organizations, Meeting #2: Tenants, Meeting #3: Community, and Meeting #4: Community), they directed staff to proceed with the sale of Parcel 1 at 1432-1446 South Main Street and to further evaluate Parcels 2 and 3 at 1452-1488 South Main Street after the adoption of the Metro Specific Plan. The direction also included an amendment to investigate relocation grants for the six remaining businesses, and one resident on Parcel 1, and vacant units on Parcel 2 and 3 with tiered relocation compensation based on the amount received from the sale of the property.

The purpose of this agenda item is to initiate the sale process of Parcel 1 through real estate brokerage services from Colliers Parrish International as directed by the City Council on December 7, 2021.

ANALYSIS:

The Milpitas Housing Authority (MHA) owns Parcel 1. This parcel was transferred to the MHA by the former Milpitas Redevelopment Agency as a housing asset. Therefore, Parcel 1 is subject to the requirements of the Dissolution Law applicable to housing assets (set forth in Health and Safety Code Sections 34176 and 34176.1) and the applicable provisions of Community Redevelopment Law. MHA must initiate activities that

are consistent with the development of the property for housing that is affordable to lower income households prior to August 31, 2022, or sell the parcel and deposit the sales proceeds into the Low- and Moderate-Income Housing Asset Fund (LMIHAF), to be used for future development of affordable housing in Milpitas. Due to the disposition activities described below, Attorney Ethan Walsh (Best, Best & Krieger) previously communicated that because staff has initiated activities such as conducting a Phase II Environmental Site Assessment (ESA) Report, Asbestos and Lead-Based Paint Survey Report, and a formal appraisal of the property, the City will continue to be in good standing with the California Department of Housing and Community Development although the sale of Parcel 1 will take place after the August 31, 2022 date.

Environmental assessment of the site was conducted as due diligence and to ensure the public received transparent and up-to-date information on possible hazardous materials that may cause harm to humans and pets in the future. A Phase I ESA was conducted by Padre Associates and submitted to the City on September 8, 2021. The objective of the ESA was to determine whether current or previous land use(s) at or adjacent to Parcel 1 may have involved, or resulted in the use, storage, disposal, treatment, and/or release of hazardous substances to the environment.

The findings of the Phase I ESA identified recognized environmental conditions (RECs) such as the potential presence of asbestos-containing materials (ACMs) and lead-based paint (LBP) within existing building structures. In addition, soil, groundwater, and soil vapor contamination were identified in 2011 and again in 2021. Total petroleum hydrocarbons (TPH) identified as gasoline and trichloroethylene (TCE) were identified in soil, groundwater, and soil vapor beneath Parcel 1 and nearby. Therefore, Padre Associates recommended the completion of an updated Phase II ESA to evaluate the identified RECs and current project site conditions.

The City hired Padre Associates to conduct the Phase II ESA and the final Report was completed on July 21, 2022. Based on the findings of the Phase II ESA, Padre Associates concluded that Parcel 1 has not been significantly impacted from current or historic site operations, and therefore further assessment of the project site is not warranted at this time.

In addition, staff received the Parcel 1 Asbestos and Lead-Based Paint Survey Report on August 18, 2022. Survey activities were conducted to identify potential asbestos in construction and building materials, as well as potential LBP surface coatings that may require special handling, disposal, or personal protective measures during planned removal and demolition activities on Parcel 1. The results of the survey indicated that eight (8) of the ninety-nine (99) bulk material samples contain asbestos at, or in excess of the laboratory reporting limits. The results of the LBP survey indicated that three (3) of the five (5) paint chip samples contained concentrations of lead. All applicable state and federal rules and regulations should be followed to protect workers, community members, and the environment during deconstruction. Therefore, the future property owner should abate before demolition of all existing structures on Parcel 1.

On September 7, 2022, the City contracted with Associated Right of Way (AR/WS) to conduct appraisal services for Parcel 1. The aforementioned environmental site assessment documents have been shared with AR/WS, which will assist on development of the appraisal to determine the market value for proposed sale of Parcel 1. The appraisal will allow the City Council to consider the highest and best use and the most competitive fair market value prior to disposition. In addition, the appraisal will allow the City Council to be in the best position to negotiate and maximize the value of the sale for future affordable housing opportunities. The appraisal process is expected to begin in a couple of weeks and completion is expected in Winter 2022/2023.

The next step in the disposition of Parcel 1 is to engage with Colliers Parrish International for real estate brokerage services. If approved by the City Council, Colliers Parrish International, will be responsible for marketing the site for sale, public bid process, closing of escrow, recordation of deed, and other standard real estate services. Colliers Parrish International has agreed to assist existing businesses and the residential tenant located on Parcel 1 with real estate services including providing alternative relocation options and other services that may help with relocation efforts.

As stated earlier, staff is anticipating the appraisal in the impending months and therefore the sale price is unknown at this time. Thus, staff recommends that the City Council proceed with a fee as a percentage of sales price instead of the actual dollar amount as it is currently not available to commence the marketing of

site for sale. The price and terms of the actual sale will be considered at a future City Council Closed Session and the sale agreement will be discussed in an Open Session. At that time, staff will divulge the actual sale price. If approved by the City Council, staff will proceed with a contingent fee contract with a stated percentage of final sales price and without the not to exceed amount. The commission due to Colliers Parrish International would be four percent (4%) of the gross sales price of the interest to be transferred (Attachment A).

Next steps include:

- Appraisal services completed – Winter 2022/2023
- Market property for a public bid process – Early 2023 (or immediately after appraisal is completed)
- City Council Closed Session for consideration of Price and Terms including any assistance for tenants, if needed – Early 2023
- City Council approval of the sale – Spring 2023

FISCAL IMPACT:

The sale price is unknown at this current time, and therefore staff recommends proceeding with a fee as a percentage of the future sales price to commence the process of marketing Parcel 1 for disposition. A contingent fee contract with a stated four percent (4%) of the gross sales price and without the not to exceed amount, is recommended, as the sales price is unknown at this time.

The price and terms of the actual sale will be considered at a future City Council Closed Session and the sale agreement will be discussed in an Open Session.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), because staff is seeking general direction on real estate services related to the disposition of property located at 1432-1446 South Main Street and is not considering a specific project at this time.

RECOMMENDATION:

Authorize the City Manager to execute a contract with Colliers Parrish International for real estate services related to the disposition of property located at 1432-1446 South Main Street, for a fee of four percent (4%) of the final gross sales price.

ATTACHMENT(s):

Attachment A: Colliers Parrish International Exclusive Authorization to Sell

EXCLUSIVE AUTHORIZATION TO SELL

Pursuant to this Exclusive Authorization to Sell and Lease ("Agreement"), the undersigned City of Milpitas ("Client") hereby irrevocably grants to COLLIERS PARRISH INTERNATIONAL, INC. ("Broker"), and its authorized agents, the exclusive right to negotiate a sale of that certain real property hereinafter described ("Property"). The exclusive agency hereby created ("Agency") shall be for a period commencing on October 5, 2022 ("start date") and ending at midnight on December 31, 2023 ("end date") ("Initial Agency Period").

A. PROPERTY

The Property is located at 1432-1446 South Main Street, in the City of Milpitas, County of Santa Clara, State of California and further described as Parcel #1.

B. PRICE AND TERMS

The price and terms for a sale of the Property shall be negotiated by Client and the prospective purchaser of the Property with the assistance of Broker.

C. EXTENSION OF INITIAL AGENCY PERIOD

The Agency shall continue automatically for thirty (30) days from and after the end date of the Initial Agency Period and thereafter be extended again for additional thirty (30) day increments until the Agency is expressly revoked by Client in writing OR on the one year anniversary of the originally established end date, whichever occurs first. Client agrees to provide thirty (30) days' notice to Broker before such express revocation shall be effective. The Agency can be extended beyond the one year anniversary date by the Client's written notice to Broker that Client agrees to extend the Agency to a new date certain. In this Agreement, "Agency Period" shall refer to the period of time from the start date to the end of the last extension of the Agency.

D. COMMISSION SCHEDULE AND PAYMENT

In consideration of this Authorization and Broker's agreement to diligently pursue the procurement of a purchaser and/or tenant(s) for the Property, Client hereby agrees to pay commissions to Broker, as follows:

1. **SALES, EXCHANGES AND OTHER TRANSFERS:** The parties agree that the commission due to Broker under this Agreement shall be four percent (4%) of the gross sales price of the interest to be transferred. A commission that has been earned by Broker shall be payable in accordance with the following provisions:

- 1.1 For sales or exchanges: (a) if such transaction is closed through an escrow, upon the closing of said escrow; (b) if such transaction is closed without an escrow, upon the earlier of (i) recordation of a deed; or (ii) delivery of a deed or other instrument of conveyance.

- 1.2 For a contract or agreement of sale, joint venture agreement, business opportunity or other transaction not involving the delivery of a deed, upon the mutual execution of the agreement evidencing the transaction.

2. **OBLIGATION TO PAY COMMISSION**

- 2.1 **During the Agency Period.** Client shall pay the commission to Broker according to the terms of this Agreement if, during the Agency Period either (a) the Property or any interest therein is sold by Client, whether or not through the efforts of Broker; or (b) qualified purchaser is procured by or through Broker, Client or any other person or entity (including another real estate broker) and said purchaser is ready, willing and able to purchase the Property or any interest therein, including but not limited to the granting of an option or right of first refusal, on the terms stated above or other terms acceptable to Client; or (c) any contract for the sale of the Property or any interest therein is made directly or indirectly with Client.

- 2.2 **After the Agency Period.** During the one (1) year period following the final expiration of the Agency Period, Broker shall have earned and Client shall pay the commission to Broker on any transaction that would otherwise qualify for a commission under 2.1 above, where the transaction involves specifically identified parties based on activity during the Agency Period. "Identified Parties" shall mean persons or entities identified on a list to be provided by Broker no later than thirty (30) days after final expiration of the Agency Period.

E. CLIENT COOPERATION

Broker agrees to use all reasonable efforts to find a purchaser for the Property, and Client agrees to cooperate with Broker in causing a sale of the Property to occur. Client shall immediately refer to Broker all inquiries of any party interested in purchasing the Property, a portion thereof or an interest

therein and Broker shall diligently pursue all such referrals. All negotiations regarding the sale of the Property shall be pursued through Broker or with Broker's knowledge as to the terms and parties. Client hereby authorizes Broker to accept a deposit from any prospective purchaser and to transfer such deposit to an escrow agent for the account of the purchaser in the case of a Sale of the Property. If a sale transaction is not consummated, any deposits or payments, including payments for options, liquidated damages and other amounts retained by Client, shall be equally divided between Client and Broker, except that Broker's portion thereof shall not exceed the amount of the commission that would otherwise have been payable upon the consummation of such transaction pursuant to the terms of this Agreement. All written offers received by Broker for the purchase of the Property shall be promptly reviewed and responded to by Client and Broker. Client further authorizes Broker to advertise the Property, and Broker shall have the exclusive right to place a sign or signs on the Property if, in Broker's opinion, the placement of such signs would facilitate the sale thereof.

F. COOPERATING BROKERS

Client acknowledges that Broker is entitled and encouraged to solicit the cooperation of other real estate brokers. However, Broker may not enter into any commission arrangements with other brokers that would be inconsistent with the terms of this Agreement or which would increase the total amount of Client's liability hereunder, and Client's sole liability for commissions shall be as provided in this Agreement. Broker has no responsibility to pay a fee or commission to a cooperating broker, unless and until Client has paid the fee or commission to Broker.

G. NONDISCRIMINATION

Both Client and Broker hereby acknowledge their understanding that it is illegal to refuse to present or sell real property to any person because of race, color, religion, national origin, sex, marital status, age or physical disability.

H. CLIENT REPRESENTATIONS

Except as may be provided in an addendum to this agreement signed by both Client and Broker, Client hereby warrants and represents to Broker that (1) Client is the owner of record of the Property or has the legal authority to execute this Agreement on behalf of such owner of record, (2) no person or entity has any right to purchase or sell the Property or any portion thereof by virtue of any agreement, option or right of first refusal, (3) there are no delinquencies or defaults under any deed of trust, mortgage or other encumbrance of the Property, (4) the Property is not subject to the jurisdiction of any court in any bankruptcy, insolvency, conservatorship or probate proceeding, and (5) neither Broker nor any salesperson affiliated with Broker has made any promises or representations to or agreements with Client not contained herein on the subject matter of this Agreement.

I. DISCLOSURES, EXPERT MATTERS, RESPONSIBILITIES OF CLIENT AND BROKER, AND THIRD-PARTY INFORMATION

1. **DISCLOSURES:** Owners of real estate must comply with California law for the disclosure of any and all known material facts concerning their property to prospective buyers as well as any other items required by California law. To meet this requirement, Broker recommends that Owners of real estate obtain legal advice from a qualified legal professional. Broker shall have no responsibility for property disclosures beyond the delivery and/or disclosure of information provided by the Owner or known to the Broker. Parties to a sale transaction should not and will not rely on Broker with regard to matters of disclosure required by Owners, but instead will rely entirely on their own investigation and that of qualified professionals and experts.

Matters requiring disclosure may include, but are not limited to, the following: Natural Hazard Disclosures (including whether or not the property is located in a flood hazard area, fire hazard severity zone, forest fire risk area, earthquake fault zone, or a seismic hazard zone), toxic mold disclosures, known material defects, presence or proximity to hazardous materials, compliance with the Americans with Disabilities Act (ADA), compliance with zoning laws, whether or not the property is located in a special tax zone (such as a Mello-Roos Community Facilities District) or a special assessment district, as well as historic energy use and the existence and results of Certified Access Specialist (CASp) inspections.

2. **DEFENSE, INDEMNITY AND HOLD HARMLESS**

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

2.2 Limitation of Liability: Neither party shall be liable to the other for, and each party hereby waives any and all rights to claim against the other, any special, indirect, incidental, consequential, punitive or exemplary damages in connection with this Agreement, including, but not limited to, lost profits, even if the party has knowledge of the possibility of such damages in any amount in excess of the fees paid or payable to Broker in connection with such transaction.

3. EXPERT MATTERS

3.1 There are a number of potentially significant matters related to commercial properties, which may be material to a particular transaction, the evaluation of which would require specialized expertise which is beyond the expertise and/or responsibility of the Broker ("Expert Matters"). Broker recommends that parties to a potential sale transaction obtain the advice of qualified professionals and experts prior to the consummation of any transaction. Parties to a sale transaction should not and will not rely on Broker with regard to Expert Matters, but instead will rely entirely on their own investigation and those of qualified professionals and experts.

3.2 Expert Matters may include, but are not limited to, the following: the use, generation, storage or presence of hazardous or toxic substances and underground storage tanks; natural hazards, such as fire, flood, or earthquake; building safety and structural integrity of roof, walls, and foundations or any improvements located on the Property; operation or condition of mechanical, plumbing, utility or life safety systems; "clean rooms" (including, but not limited to, classification, operation and/or condition); mold, fungus, water damage, or effects of moisture; compliance with Americans with Disabilities Act (ADA); compliance with building, zoning and fire codes; tax, accounting, or legal effects or consequences of the proposed transaction; survey, linear or area measurements of the Property; availability and/or adequacy of utilities and utility connections and panels, adequacy, availability and condition of sewer lines and/or connections, public transportation, or other infrastructure; zoning and permitted land uses; insurance policies and premiums; architectural design or engineering; geotechnical/soil condition; termites or other pests or rodents; condition of title; or existing taxes, assessments or liens.

3.3 Broker has no responsibility to, has not made and will not make an independent investigation or determination with respect to any Expert Matters. Any information communicated by Broker regarding any of the Expert Matters arises from third party sources and has not been and will not be independently verified by Broker.

4. Any provision of third party information or related material provided to Client by Broker is for general informational purposes only. Any information furnished by Broker is not intended to be tax, legal, investment or transaction advice. Broker makes no guarantees, representations or warranties of any kind, express or implied regarding the accuracy, authenticity, completeness, legality, or reliability of any third party information, and Broker has not made, will not make, and hereby disclaims, any warranty or representation with respect to the prospective property, owner, or buyer. Client and any other interested party should undertake their own inquiries as to the accuracy of information, and acknowledges and agrees that Broker shall not be liable for any errors, omissions or inaccuracies of any information provided. Client and its counsel will be responsible for determining the legal sufficiency of a sale agreement and other documents relating to any transaction contemplated by this Agreement.

5. All of the provisions of this Section (K) shall survive the expiration or earlier termination of this Agreement.

J. DUAL AGENCY

Client authorizes Broker to appoint **Mark Zamudio and Blake Zamudio** to act as Client's listing agent(s) (the "**Listing Agent(s)**"). It is understood and agreed that this Agreement creates an agency relationship with Listing Agent(s) and Broker only, not with any other salespersons or brokers employed by or associated with Broker; provided, Client authorizes Broker to appoint other salespersons or brokers employed by or associated with Client as subagents to act on behalf as and when needed, at Client's sole discretion. Any broker or salesperson other than Listing Agent(s) will not be representing Client and may represent the purchaser. Accordingly, for purposes of this Agreement, "Broker" means Listing Agent(s), including any subagents, and Listing Agent's Broker, Designated Broker or Branch Manager, unless expressly stated otherwise. Client agrees that if all or any portion of the Property is sold to a purchaser represented by one of Broker's salespersons or brokers other than the Listing Agent(s), then Client consents to Broker acting as a dual agent. Client further agrees that if the Property is sold to a purchaser who Listing Agent(s) also represents, then Client consents to Listing Agent(s) and Broker acting as dual agents. Owner understands and agrees that different salespersons or brokers employed by or associated with Broker may represent different owners in competing transactions involving the same purchaser. Client hereby consents to such representation and agrees that it shall not be considered action by Broker that is adverse or detrimental to the interests of either owner, nor shall it be considered a conflict of interest on the part of Broker. If Broker acts as a dual agent, then Broker shall be entitled to the entire commission payable under this Agreement plus any additional compensation Broker may have negotiated with the purchaser. Acceptance of referral fees between salespersons or brokers employed by or associated with Broker will not be considered an action that is adverse or detrimental on the part of the salespersons or brokers employed by or associated with Broker or Broker, nor shall it be considered a conflict of interest by the salespersons, brokers, or Broker.

Client acknowledges receipt to the Disclosure Regarding Real Estate Agency Relationship. If applicable, Client acknowledges receipt of the pamphlet entitled "The Law of Real Estate Agency" and/or any such required materials of the State of California

K. DISPUTE RESOLUTION

Any disputes between the Client and Broker (collectively "Parties") arising from this Agreement or the real estate transaction contemplated in it shall be resolved as follows:

1. **DIRECT DISCUSSIONS AND MEDIATION:** Client and Broker shall first try to resolve disputes through direct discussions involving people and representatives with decision-making authority. In the event of delays, failure to participate, or either party's belief that direct discussions will not be successful, the Parties shall proceed with mediation. Any disputes between Client and Broker not resolved through such direct discussions shall be submitted to mediation using the mediators and procedures of JAMS, with such mediation taking place at the San Jose, California offices of JAMS unless the Parties agree otherwise in writing; the Parties shall share equally the costs of such mediation charged by JAMS. The Parties shall select the mediator within fifteen (15) days of the request for mediation; if they are unable to reach agreement on the selection of a mediator, JAMS shall appoint one not later than thirty (30) days from the request for mediation. Any mediation pursuant to this Agreement shall be completed within sixty (60) days of the selection of a mediator, unless the Parties agree otherwise in writing. Participation in mediation as provided herein is a condition precedent to any form of binding dispute resolution. Notwithstanding the foregoing, the Parties are not required to mediate disputes that are within the jurisdiction of the Small Claims Court of the State of California.

L. GENERAL PROVISIONS

1. **BINDING ON SUCCESSORS:** The parties intend for and agree that their respective successors, assigns, heirs and transferees shall be bound by this Agreement.
2. **AMENDMENTS AND MODIFICATION:** No amendments to or modifications of this Agreement nor the termination of this Agreement shall be valid or binding unless made in writing and signed by both Client and Broker. Any purported amendment, modification or termination of this Agreement that is oral, or that is in writing but not signed by both Client and Broker, shall be void and of no effect whatsoever.
3. **ATTORNEYS' FEES, COSTS AND INTEREST:** Subject to Article K of this Agreement, if any claim or controversy arises concerning the performance or interpretation of this Agreement, the prevailing party shall be entitled to attorney's fees, court costs, expert witness fees and/or other expenses relating to said claim or controversy, through appeal, if any. For the purposes of this Agreement, "prevailing party" shall mean the party that received substantially the relief requested, whether by settlement, dismissal, summary judgment, arbitration, judgment or otherwise.
4. **ENTIRE AGREEMENT OF PARTIES:** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the Property. Both parties to this Agreement acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.
5. **PARTIAL INVALIDITY:** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.
6. **GOVERNING LAW:** This Agreement will be governed by and construed in accordance with the laws of the State of California. In the event of any legal action, jurisdiction and venue shall be in the Superior Court of the State of California, for the County in which the Property is located.
7. **NOTICES:** Notices under this Agreement shall be provided in writing to the other party by regular U.S. mail, by facsimile, or by e-mail, addressed to the last known postal address, facsimile number, or e-mail address of the party.
8. **TIME:** The parties agree that time is of the essence with regard to the matters provided for in this Agreement.

M. OTHER TERMS AND CONDITIONS

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

2. Wage Theft Provision.

- a. Broker, and any subconsultant it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.
- b. BY SIGNING THIS AGREEMENT, BROKER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT BROKER OR ITS SUBCONSULTANTS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. BROKER FURTHER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, BROKER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT BROKER OR ITS SUBCONSULTANT(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.
- c. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Broker or a subconsultant it employs to perform work under this Agreement has violated any applicable wage and hour law, or Broker learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Broker shall inform the Client no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Broker or its subconsultant(s) shall, within thirty (30) calendar days after notifying the Client, either (i) fully satisfy any such judgment, decision, or order and provide the Client with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the Client documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Broker or its subconsultant is subject to a payment or other alternative plan, the Broker or its subconsultant shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.
- d. For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the Client, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.
- e. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- f. Notice provided to the Client shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

3. Existing Tenant Assistance.

Broker, and any subconsultant it employs to complete work under this Agreement, shall assist existing businesses and residential tenant with real estate services including providing alternative relocation options and other services that may help with relocation efforts.

[Remainder of page intentionally left blank; signature page to follow.]

The undersigned Client has read and understood and hereby agrees to be bound by the foregoing.

BROKER:

Colliers Parrish International, Inc., dba Colliers International

By: Mark Zamudio Date _____
Mark Zamudio
 California Department of Real Estate License No. **00612338**

Its: Executive Vice President

E-Mail: mark.zamudio@colliers.com

Direct: (408) 282-3822 Mobile: (408) 391-7423

E-Fax: [4082823822@rcfax.com](tel:4082823822)

Address: 225 West Santa Clara Street, 10th Floor, Suite 1000
San Jose, California 95113

Phone: (408) 282-3800 Fax: (408) 292-8100

MANAGING DIRECTOR:

By: _____ Date _____
Steffen Kammerer
 California Department of Real Estate License No. **01891670**

Its: Executive Managing Director

E-Mail: steffen.kammerer@colliers.com

Direct: (408) 282-3801 Mobile: (650) 862-4364

E-Fax: [4082823801@rcfax.com](tel:4082823801)

Address: 225 West Santa Clara Street, 10th Floor, Suite 1000
San Jose, California 95113

Phone: (408) 282-3800 Fax: (408) 292-8100

CLIENT:

City of Milpitas

By: _____ Date _____
Michael Mutalipassi, City Attorney

Its: City Attorney

E-Mail: mmutalipassi@milpitas.gov

Direct: (408) 586-3041

By: _____ Date _____
Steven G. McHarris, City Manager

Its: City Manager

E-Mail: smcharris@milpitas.gov

Direct: (408) 586-3059

Address: 455 East Calaveras Boulevard
Milpitas, California 95035



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Accept Funding from the Association of Bay Area Governments (ABAG) for the Management of the Regional Early Impact Planning (REAP) Grant (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046 Robert Musallam, Housing and Neighborhood Services Administrator, 408-586-3275)
Category:	Consent Calendar-Community Development
Meeting Date:	10/4/2022
	<u>Recommendation:</u> Authorize the City Manager to accept grant funding from the Association of Bay Area Governments (ABAG) for the Management of the Regional Early Impact Planning (REAP) Grant and approve related budget amendments for revenue in the amount of \$142,718 (\$62,823 for FY21-22 and \$79,895 for FY22-23).

Background:

The Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) are jointly responsible for regional planning of the Bay Area, which includes nine counties and 101 cities and jurisdictions. As a council of government, ABAG is eligible for the Department of Housing and Community Development's Regional Early Impact Planning Grant Program (REAP). In response to the state's housing crisis, REAP was created to accelerate housing production and facilitate compliance in implementing the sixth cycle of the Housing Element and Regional Housing Needs Allocation (RHNA). In late 2021, the City of Milpitas applied for a suballocation of the Regional Early Impact Planning (REAP) grant through ABAG.

The City of Milpitas requested REAP funds for three purposes (Attachment 1). First, to procure a consultant to create an Assessment of Fair Housing (AFH) in preparation for the draft Housing Element. The assessment will consist of community engagement, racially disaggregated data analysis and mapping, collection and analysis of supplemental local data, analysis of contributing factors, development of goals and strategies, production of the AFH report, document translation services, and consultant travel. Second, to partially fund a full-service housing element consultant to manage the project. The consultant, Raimi and Associates is currently reviewing previous Housing Element and related documents, conducting robust and meaningful community engagement, synthesizing stakeholder input, assessing housing needs and constraints, completing a sites inventory analysis per California Department of Housing and Community Development (HCD) guidelines, and identifying goals, policies, and programs with measurable objectives. Additionally, Raimi and Associates has presented at public hearings, coordinated administrative draft reviews with HCD, and will soon prepare all CEQA documentation. Third, to explore possible redevelopment options for the Great Mall site, as part of the work related to the Housing Element. On July 22, 2022, ABAG announced a suballocation award of one-hundred forty-two thousand seven-hundred eighteen dollars (\$142,718) of REAP funding to the City of Milpitas.

Analysis:

REAP funds must be spent to support planning activities that accelerate housing production or facilitate compliance in implementing the sixth cycle of the Housing Element and RHNA. Funds may not be spent to support RHNA appeals or the development of specific housing projects.

In accordance with the REAP grant's eligible activities, the funds will be allocated for the following activities:

- Activities for preparation of the Assessment of Fair Housing

- Housing Element workplan and schedule
- Community engagement strategy
- Housing and special housing needs review
- Housing constraints analysis
- Sites inventory
- Housing Element goals, policies, and programs
- Evaluation of possible redevelopment options for the Great Mall (as part of the work related to the Housing Element)

The City has contracted with Raimi and Associates to support the City in accomplishing the activities listed above. In coordination with ABAG and Raimi and Associates, the City will be on track to complete its Housing Element by early 2023. The REAP grant covers a portion of the contract with Raimi & Associates to prepare the Housing Element and covers the contract with the Lawyers' Committee for Civil Rights Under Law to prepare the Fair Housing Assessment, which is a required component of the Housing Element. ABAG will reimburse the City for all expenses deemed reasonable and necessary. The City of Milpitas is required to submit invoices for Fiscal Year 2021-22 Quarters 2-4 and Fiscal Year 2022-23 Quarter 1.

Fiscal Impact:

The City received grant funding for the Housing Element and the balance of this professional services contract would be funded from the Affordable Housing Fund 216. The City applied to the Association of Bay Area Governments (ABAG) for Regional Housing Technical Assistance (REAP) non-competitive and competitive grant funding to help fund the development of the Housing Element and Assessment of Fair Housing. ABAG awarded the City a total of \$142,718. Out of this total amount, \$114,378 was awarded for work on the Housing Element and the majority of this work has been completed. The remaining \$28,340 will be used to evaluate potential redevelopment options for the Great Mall site, as part of the work related to the Housing Element. In FY21-22, \$62,823 was already recognized from the award due to performance of Housing Element professional services. In FY22-23, the remainder \$79,895 will be recognized in the grant revenue.

The Housing Element professional services cost is \$431,710 with \$114,378 to be reimbursed using REAP grant funds, the remaining balance of \$317,332 will come from the City's Affordable Housing Fund 216. The fiscal impact is a \$317,332 reduction to the fund balance. If future amendments to the professional services agreement are needed and Council authorizes the City Manager to execute the amendments for an amount up to \$50,000, the fiscal impact would be a maximum of \$50,000 reduction to the fund balance at the time of the amendments.

California Environmental Quality Act:

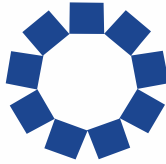
The actions being considered have no potential for causing a significant effect on the environment and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3). Further, this action does not meet the definition of a project under CEQA Guideline 15378 as it is a government fiscal activity which does not commit to any project that would result in a potentially significant impact on the environment.

Recommendations:

Authorize the City Manager to accept grant funding from the Association of Bay Area Governments (ABAG) for the Management of the Regional Early Impact Planning (REAP) Grant and approve related budget amendments for revenue in the amount of \$142,718 (\$62,823 for FY21-22 and \$79,895 for FY22-23).

Attachment:

1. Draft Suballocation Agreement
2. Budget Change Form (BCF)



ASSOCIATION
OF BAY AREA
GOVERNMENTS

Bay Area Metro Ce
375 Beale Street, Suite 700
San Francisco, CA 94105
415.820.7900
www.abag.ca.gov

Item # C11.

Jesse Arreguin, President
Mayor, City of Berkeley

Belia Ramos, Vice President
Supervisor, Napa County

David Rabbitt
Immediate Past President
Supervisor, Sonoma County

Karen Mitchoff
Chair, Regional
Planning Committee
Supervisor, Contra Costa County

Jesse Arreguin
Chair, Legislation Committee
Mayor, City of Berkeley

Karen Mitchoff,
Chair, Finance Committee
Supervisor, Contra Costa County

August 1, 2022

Steve McHarris
City Manager
City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035

RE: REGIONAL EARLY ACTION PLANNING (REAP) GRANT SUBALLOCATION AGREEMENT, CITY OF MILPITAS

Dear Mr. McHarris,

This letter, effective as of August 1, 2022, (“Effective Date”) is the agreement between City of Milpitas (“Recipient”) and the Association of Bay Area Governments (“ABAG”) to support the performance of community engagement, analysis, plan writing, and presentations at public hearings relating to the preparation of an Assessment of Fair Housing, preparation of the City’s cycle six Housing Element, and possible redevelopment options for the Great Mall (“the Agreement”).

WHEREAS, ABAG has received grant funds awarded by the State of California Department of Housing and Community Development (“HCD”) Grant Agreement No. 19-REAP-13915 (“REAP Grant Agreement”), attached hereto and incorporated herein by this reference as Attachment B, pursuant to the Notice of Funding Availability – REAP (“REAP NOFA”), attached hereto and incorporated herein by this reference as Attachment C. Accordingly, any applicable clauses in Attachments B and C are hereby imposed upon Recipient; and

WHEREAS, ABAG has obtained funds from the California Department of Housing and Community Development (“HCD”), the state-required clauses in Attachment D, State-Required Clauses, are attached hereto and incorporated herein; and

WHEREAS, ABAG has suballocated REAP funding to support the Project. Pursuant to Article 4 below, Recipient has opted to receive the funds directly to administer a contract to complete the Project. Payments will be made directly to the Recipient based on the conditions in Article 4.

1. It is agreed that Recipient either has or will perform all the services specified in Attachment A-1, Scope of Work, according to the schedule in Attachment A-2, Project Payment Schedule, both attached hereto and incorporated herein by this reference, and in compliance with the requirements of all other attachments to this Agreement, which are also incorporated herein by this reference.
2. Work will be reviewed by Heather Peters or a designated representative (herein “ABAG Project Manager”) for compliance with the terms of this agreement including the terms of Attachments B and C hereto. Eligible activities must be related to housing planning and facilitate the streamlining and acceleration of housing production. Ineligible activities include:
 - a) RHNA appeals;
 - b) Activities unrelated to accelerating housing production;
 - c) Activities unrelated to preparation and adoption of planning documents, and process improvements to accelerate housing production;
 - d) Activities that obstruct or hinder housing production, e.g., moratoriums, downzoning, planning documents with conditional use permits that significantly impact approval certainty and timing, planned development, or other similarly constraining processes;
 - e) Capital financing, operation or funding related to programs of individual housing development projects; and
 - f) Administrative costs of persons employed by the grantee for activities not directly related to the preparation and adoption of the proposed Activity or Activities.
3. ABAG has developed a project management platform with City Innovate, Inc. (City Innovate) to assist in the procurement, contracting, and invoicing process. The Terms & Conditions of use for the City Innovate platform are attached hereto and incorporated as Attachment F-1 and the Software as a Service Agreement by City Innovate and ABAG dated April 15, 2021, is attached hereto and incorporated as Attachment F-2. Accordingly, Recipient shall comply with any and all applicable clauses in Attachment F-1 and Attachment F-2.
4. ABAG has suballocated one-hundred forty two thousand seven-hundred eighteen dollars and zero cents (\$142,718) (“Maximum Payment”), which Recipient has elected to receive directly. Expenses shall not exceed the Maximum Payment. Recipient will be compensated for the work in accordance with Attachment A-2.–ABAG shall make payments to Recipient in accordance with the provisions described in Attachment A-2. Contingent upon Recipient’s satisfactory completion of work products or milestones, as applicable, required under Attachment A-1, Recipient shall submit invoices to ABAG for reimbursement of that portion of the funds available to Recipient that have been expended

or are due to third parties. These invoices will refer to the deliverables listed in Attachment A-2 to allow for expenditure tracking at the task level. Invoices shall be provided no more frequently than prescribed by ABAG in Attachment A-2. In addition, all supporting documentation must accompany expenditures included on Recipient invoices. Payment shall be made by ABAG within thirty (30) days of receipt of an acceptable invoice, which shall be subject to the review and approval of ABAG's Project Manager or a designated representative. Recipient should submit invoices electronically via email to ABAG at HousingTA@bayareametro.gov or as directed by the ABAG Project Manager.

5. To the extent requested by the ABAG Project Manager, Recipient, or consultant procured by ABAG on behalf of Recipient (if any), shall submit communications and progress reports no more frequently than quarterly and required documentation, including but not limited to invoices, requests for agreement modifications, and information on payments received and made to subrecipients, subrecipient utilization, and if applicable, certified payrolls, to the ABAG Project Manager or their designee via one or more web-based systems designated by ABAG to which ABAG will provide Recipient with system access. ABAG may withhold payment of invoices and/or require consultant procured by ABAG on behalf of Recipient to cease or suspend work pending receipt of such communications, progress reports and required documentation via the applicable web-based system.

6. Recipient acknowledges that a goal of ABAG's Regional Housing Technical Assistance Program is to share work product funded in whole or in part by REAP widely to achieve economies of scale and to avoid inefficient duplication of effort. To further this goal, Recipient shall provide a copy of the final work product described in Attachment A-1 to ABAG via email to HousingTA@BayAreaMetro.gov within 10 days of completion. If completion of a task contained in Attachment A-1 does not result in the production of a document, then Recipient shall submit a short summary of the work completed to the reasonable satisfaction of ABAG, including lessons learned, to MTC/ABAG via email to HousingTA@BayAreaMetro.gov within 10 days of completion. Additionally, Recipient acknowledges that all work product created pursuant to this Agreement is subject to the joint ownership requirements of Section 12, State-Owned Data, of Exhibit D, REAP Terms and Conditions, of Attachment B, REAP Grant Agreement, as work product is defined therein, and Recipient shall take all necessary actions to comply and have its subcontractors and/or subconsultants comply with such requirements.

7 All work product described in Attachment A-1 shall comply with federal accessibility requirements, as specified in Section 508 of the Rehabilitation Act (29 U.S.C. § 798 SECTION 508"). Compliance encompasses both website structure (design, layout, function), and website content (text,

images, documents).

8. Recipient acknowledges that a goal of ABAG's Regional Housing Technical Assistance Program is to facilitate statewide, regional, and subregional collaboration on housing planning. To further this goal, at all times through the term of this Agreement, Recipient shall designate at least one person who is currently responsible for providing housing planning services to it to receive communications from ABAG, HCD and subregional Planning Collaboratives and their representatives regarding available technical assistance at the state, regional and subregional levels. Recipient designates the following person(s) to receive these communications and shall notify ABAG via email at HousingTA@BayAreaMetro.gov of a replacement designee in the event of a change in personnel within 10 days:

Hanson Hom
Senior Special Projects Associate
hhom@milpitas.gov
510-570-9538

9. The term of the Agreement shall begin on the Effective Date and conclude on December 31, 2023, unless ABAG terminates this Agreement earlier as provided below.

10. If Recipient fails to perform as specified in the Agreement, or if HCD terminates REAP funding to ABAG due to failure of the California Legislature to appropriate sufficient funds for the REAP program, ABAG may terminate the Agreement for cause by advance 10-day written notice, providing Recipient with the opportunity to cure the default or present an acceptable plan for cure within the 10-day period. At the end of the 10-day period, if the default has not been cured or an acceptable plan of cure presented, ABAG may issue a notice of termination for default, effective immediately, and Recipient will be entitled only to costs incurred for acceptable work performed in accordance with the Agreement, not to exceed the maximum amount payable under the Agreement for such work.

11. Recipient agrees to require any consultant contracted to perform work related to the completion of the Scope of Work after the effective date of this Agreement to name the ABAG Indemnified Parties (as defined in Paragraph 14 below) and California Department of Housing and Community Development (HCD) as additional insureds in the same manner as Recipient in any agreement that requires the consultant to obtain and maintain insurance and to name Recipient as an additional insured.

Upon request by ABAG, Recipient shall deliver to ABAG insurance documentation (including

Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the coverages. Such evidence of insurance shall make reference to all provisions and endorsements as required by the agreement between Recipient and consultant and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance. ABAG reserves the right to require copies of all required policy declarations pages or insurance policies, including endorsements, required by these specifications, at any time.

CONSULTANT shall submit certificates of insurance to:

Association of Bay Area Governments
Insurance Compliance
P.O. Box 100085-M8
Duluth, GA 30096
or
Email: MTC@Ebix.com
or
Fax: 1-888-617-2309

ABAG reserves the right to require copies of all required policy declarations pages or insurance policies, including endorsements, required by these specifications, at any time.

12. Except for invoices and any communications required to be submitted by Recipient via web-based system, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, or emailed to such party at their respective addresses as follows:

To ABAG: Attention: Heather Peters
Association of Bay Area Governments
375 Beale Street, Suite 700
San Francisco, CA 94105
Email: hpeters@bayareametro.gov

To RECIPIENT: Attention: Steve McHarris
 City Manager
 City of Milpitas
 455 East Calaveras Blvd.
 Milpitas, CA 95035
 Email: smcharris@milpitas.gov

13. In performing work under the Agreement, Recipient will be acting as an independent contractor and not as an agent or employee of ABAG. Recipient will have no authority to contract in the name of ABAG, and Recipient will be responsible for its own acts and those of its agents and employees.

14. Recipient shall indemnify, defend, and hold harmless ABAG, MTC, and their respective board members, representatives, agents and employees (“ABAG Indemnified Parties”) from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of Recipient, its officers, employees or agents, or subconsultants or any of them in connection with this Agreement.

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

16. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between ABAG and Recipient that cannot be resolved through the informal, good faith efforts of the parties may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. Recipient must file a government claim pursuant to Government Code section 910 et seq. in order to initiate a civil action. The prevailing party in any dispute shall be entitled to payment of its attorneys’ fees and costs. This section shall survive the termination or expiration of the Agreement.

17. All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State.
18. Recipient may subcontract to consultants or contractors for performance of portions of the work required under this Agreement, without the prior written consent of ABAG, provided Recipient complies with any other applicable requirements of this Agreement and the applicable Attachments hereto, and applicable federal and state requirements.
19. For purposes of this Agreement, “subconsultant” shall mean any consultant or contractor under contract with the Recipient to perform Project work. Any subconsultants must be engaged under written contract with Recipient with provisions allowing Recipient to comply with all requirements of this Agreement. Failure of a subconsultant to provide any insurance required under this Agreement shall be at the risk of Recipient. ABAG’s Project Manager shall be notified in writing of any substitution or addition of subconsultants.
20. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between ABAG and any subconsultants, and no subcontract shall relieve Recipient of his/her responsibilities and obligations hereunder. Recipient agrees to be as fully responsible to ABAG for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Recipient. Recipient's obligation to pay its subconsultants is an independent obligation from ABAG's obligation to make payments to Recipient.
21. Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement entered into under of this Agreement. If the Recipient already has a subconsultant in place performing applicable work, then Recipient is responsible for communicating to its subconsultant of all applicable provisions of this Agreement.
22. This Agreement constitutes the complete agreement between the parties and supersedes any prior written or oral communications. Any changes to this agreement may only be amended by mutual agreement of ABAG and Recipient at any time during the term of the Agreement. All such changes shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the authorized Executive or a designated representative of ABAG and Recipient and specifically identified as

amendments to the Agreement. The ABAG Project Manager is not a designated representative, for purposes of executing an amendment.

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

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

If you agree, please sign this letter in the space provided below.

Very truly yours,

Therese W. McMillan
Metropolitan Transportation Commission
Executive Director
Acting pursuant to the Contract for Services dated May 30, 2017

Accepted and Agreed to this:

Dated: _____

BY: _____
Steven G. McHarris, City Manager

APPROVED AS TO FORM

Dated: _____

BY: _____
Michael Mutalipassi, City Attorney

APPROVED AS TO CONTENT

Dated: _____

BY: _____
Alex Andrade, Economic Development Director

APPROVED:

Dated: _____

BY: _____
Lauren Lai, CPA, MPA
Risk Manager/Finance Director

ATTACHMENT A-1

SCOPE OF WORK FOR CITY OF MILPITAS (“RECIPIENT”)

All work will support the overarching goals of the REAP program to support planning activities that (1) accelerate housing production or (2) facilitate compliance in implementing the sixth cycle of the RHNA.

Funds will only be used for planning activities and will not be used to support RHNA appeals or the development of specific housing projects, including capital financing, building operation costs, or resident services.

The following Tasks will be accomplished by Recipient and Recipient’s consultant(s).

Task 1 – Assessment of Fair Housing

Activities for preparation of the Assessment of Fair Housing include:

- Conduct a robust outreach process with a variety of stakeholders and residents.
- Gather HUD-provided, state and local data that is necessary to answer the questions in HUD’s Assessment Tool, to prepare maps, and to analyze contributing factors to fair housing issues in Milpitas.
- The consultant will synthesize the stakeholder input and analysis into a set of Fair Housing Goals and Priorities that respond to the City’s contributing factors of fair housing issues.
- The consultant will prepare a draft Assessment of Fair Housing for City Council consideration.
- The consultant will translate key documents as needed to facilitate an inclusive public process. As health guidelines and other considerations allow, the consultant may travel to Milpitas to present the draft Assessment of Fair Housing in person at a public hearing.

Task1.1 Deliverables:

- 1.1 The Final AFH report

Task 2 - Housing Element

Subtask 2.1 – Housing Element: Project Kick-off, Workplan, and Schedule

The City’s Housing Element consultant will organize a kick-off coordination meeting with City staff to review a detailed workplan and schedule for the project.

Subtask 2.1 Deliverables:

- 2.1.1 Agendas and meeting notes for kick-off
- 2.1.2 Detailed project workplan and schedule

Subtask 2.2 – Housing Element: Background Review

Working closely with City staff and using most recent Annual Progress Report, the consultant will review the current Housing Element and identify Milpitas’ success in accomplishing/implementing the identified goals, policies, and programs and provide

explanations and updates where goals, policies, or programs are in progress, have been abandoned, or have not proven effective. The consultant will also review the City’s new General Plan for any housing-related policies, the Transit Area Specific Plan (Metro Plan), the Milpitas Midtown Specific Plan (Gateway-Main Street Plan), the Zoning Code, the Affordable Housing Ordinance, the forthcoming Assessment of Fair Housing, and other related documents/policies as appropriate.

Subtask 2.2 Deliverable:

2.2.1 Admin Draft and Final Background Review report in Word and PDF formats.

Subtask 2.3 – Housing Element: Community Engagement Strategy

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

Subtask 2.3 Deliverable:

2.3.1 Draft and Final Community Engagement Strategy

Subtask 2.4 – Housing Element: Housing and Special Housing Needs Review

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

Subtask 2.4 Deliverable:

2.4.1 Admin Draft and Final Housing and Special Housing Needs assessment in Word and PDF formats

Subtask 2.5 – Housing Element: Housing Constraints Analysis

Consultant will identify potential and actual governmental and nongovernmental constraints for the preservation, protection, or production of housing across income levels within the city. This analysis will include on-the-ground knowledge from City staff and cross-jurisdictional comparisons provided by ABAG. It will include write-ups of typical countywide non-governmental constraints, including community opposition to housing, cost of construction, limited availability of land and other topics.

Subtask 2.5 Deliverable:

2.5.1 Draft Housing Constraints Chapter in Word and PDF formats

Subtask 2.6 – Housing Element: Preliminary Sites Inventory

Consultant will develop a preliminary sites inventory. Consultant will coordinate closely with both specific plan updates and may identify additional sites. Consultant will work closely with the City’s Fair Housing Assessment consultant and will review the preliminary inventory for consistency with Affirmatively Furthering Fair Housing.

Subtask 2.6 Deliverable:

2.6.1 Preliminary Sites Inventory in PPT format with Excel spreadsheet

Subtask 2.7 – Housing Element: Sites Inventory

Consultant will prepare all sections of the sites inventory and back-up documentation demonstrating how Milpitas will satisfy its RHNA obligations in each income category. This includes identifying assumptions and evidence to support them, evaluating sites for feasibility, determining site capacity (per State law), analyzing potential policy strategies to increase site capacity, and inputting all required information into HCD's required format.

Subtask 2.7 Deliverable:

2.7.1 Draft Sites Inventory in Word, PDF, and Excel formats, including a fully populated HCD site inventory spreadsheet

Subtask 2.8 – Housing Element: Goals, Policies and Programs

Consultant will prepare goals, policies, programs, and quantified objectives to include in the Housing Element. This task includes ensuring responsiveness to priorities articulated through the community engagement process as well as ensuring internal consistency with other elements of the newly adopted General Plan and two Specific Plans. This task will include identification of other General Plan policy updates or revisions needed to ensure consistency. This task should integrate relevant goals and actions from the Assessment of Fair Housing which will be prepared by a separate consultant.

Subtask 2.8 Deliverable:

2.8.1 Draft Goals, Policies, Programs and Quantified Objectives in Word and PDF formats

Task 3 – Evaluation of Possible Redevelopment Options for Great Mall

The City is working with the owner of the Great Mall to explore a possible phased redevelopment into a high-density mixed-use TOD.

Task 3 Deliverable:

3.1 Memorandum describing possible options for partial or full redevelopment of the Great Mall.

ATTACHMENT A-2

PROJECT PAYMENT SCHEDULE FOR CITY OF MILPITAS (“RECIPIENT”)

ABAG will reimburse Recipient for all expenses deemed reasonable and necessary by ABAG incurred by Recipient in the performance of this Agreement with deliverables described in Attachment A-1. Recipient shall submit invoices for:

DELIVERABLE	DUE DATE	AMOUNT
Task 1. Assessment of Fair Housing – Final AFH report	August 31, 2022	\$ 28,340
Task 2. Housing Element - completion of deliverables in Subtasks 2.1 to 2.8	October 15, 2022	\$ 100,878
Task 3. Evaluation of Possible Redevelopment Options for Great Mall - Memorandum describing possible options for partial or full redevelopment of Great Mall.	December 31, 2022	\$ 13,500
TOTAL		\$ 142,718

ATTACHMENT B

**STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT GRANT AGREEMENT NO. 19-REAP-13915 (INCLUDES AMENDMENTS)**

ATTACHMENT C

NOTICE OF FUNDING AVAILABILITY – REAP

ATTACHMENT D

STATE REQUIRED CLAUSES

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this agreement, Recipient shall not discriminate against any employee for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Recipient shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Recipient shall post in conspicuous places, available to employees for employment, notices to be provided by the State of California (“STATE”) setting forth the provisions of this Fair Employment section.
2. Recipient, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this agreement by reference and made a part hereof as if set forth in full. Each of the Recipient’s contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements as appropriate.
3. Recipient shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this agreement.
4. Recipient shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this agreement.
5. Remedies for Willful Violation:
 - (a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Recipient was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Recipient has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

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

ATTACHMENT E

Not Used

ATTACHMENT F-1

TERMS & CONDITIONS OF USE FOR CITY INNOVATE PLATFORM

The Association of Bay Area Governments (“ABAG”) has entered into a Software as a Service Agreement with City Innovate, Inc. dated April 15, 2021 (the “ABAG Agreement” which is attached to this Agreement as Attachment F-2), to provide access to a proprietary online platform (the “Platform”) that is intended to allow government agencies to:

- Search profiles of consultants that have been pre-approved to sit on the Regional Planning Consulting Bench, review their pricing, experience, work samples and DBE/SBE status.
- Streamline the informal vendor bidding process when local rules allow, including functionality allowing for drafting and submitting requests for bids and addendums.
- Track progress on project milestones; and
- Route invoices for approval.

During the term of the ABAG Agreement, ABAG will provide Recipient with one (1) set of logs in credentials for the Platform free of charge to utilize the features of the Platform listed above subject to the terms and conditions set forth in this Attachment. Recipient acknowledges that use of the Platform is provided only for Recipient’s own use and agrees not to use the Platform for the benefit of any third party.

Use of the Platform by Recipient will be subject to the terms and conditions of the ABAG Agreement which is incorporated herein by this reference.

ABAG makes no express or implied warranty regarding the Platform. Recipient assumes all risk of using the Platform and shall indemnify, hold harmless and defend ABAG against any claims made related to Recipient’s use of the Platform that was not required by ABAG.

ABAG reserves the right to require Recipient, through written notice of no less than 30 days, to utilize the Platform to track the project milestones and submit invoices related to this Agreement as set forth in Attachments A-1 and A-2 and to assist in the procurement of consultants to perform said services if Recipient elects to have ABAG administer that amount on behalf of Recipient to deliver the work outlined in Attachment A-1 in the timeframes outlined in Attachment A-2. Said notice, if given, shall include information on how Recipient can obtain training in the use of the Platform and contact information for Recipient to request assistance with any questions about use of the Platform. If at any time the Platform is unavailable through no fault of Recipient, then Recipient may submit any progress reports on project milestones and invoices required by this Agreement that are due during the time of said unavailability of the Platform via email to HousingTA@BayAreaMetro.gov.

Recipient is responsible for enforcing its own procurement rules when directly procuring consultants using the Platform. ABAG makes no representation of the legality of procurements issued by Recipient using the Platform. ABAG’s procurement rules shall apply to all procurements by made by ABAG to perform

services if Recipient elects to have ABAG administer that amount on behalf of Recipient to deliver the work outlined in Attachment A-1 in the timeframes outlined in Attachment A-2.

Recipient acknowledges that the Platform is not intended for the storage of Sensitive Data, and Recipient agrees not to solicit or encourage the submission of Sensitive Data or itself submit Sensitive Data in connection with the Platform. “Sensitive Data” means: (i) Social Security or other tax identification numbers; (ii) account, credit or debit card numbers, with or without any required security code, access code, PIN or password that would permit access to an individual’s financial account, and account information, including balances and transaction data; (iii) user names, passwords or other credentials for accessing any accounts on any third party systems or platforms; (iv) any personally-identifiable information or PII as defined by applicable law; and (v) any other information with respect to which the unauthorized use or disclosure thereof would be reasonably likely to cause material loss or damage to any third party.

The Platform is not intended to be a data repository or archiving tool. Recipient is solely responsible for maintaining records of its direct procurements on the Platform and is required to comply with the California Public Records Act (Government Code §6250 *et seq.*).

ATTACHMENT F-2

**SOFTWARE AS A SERVICE AGREEMENT BY AND BETWEEN CITY INNOVATE, INC.
AND THE ASSOCIATION OF BAY AREA GOVERNMENTS DATED APRIL 15, 2021**

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☐ Budget Appropriation ☐ Budget Transfer	216-3551	\$79,895	216-2909 216-5364237	\$51,555 \$28,340

Authorize the City Manager to accept grant funding from the Association of Bay Area Governments (ABAG) for the Management of the Regional Early Impact Planning (REAP) Grant and approve related budget amendments for revenue in the amount of \$142,718.

Background:

The Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) are jointly responsible for regional planning of the Bay Area, which includes nine counties and 101 cities and jurisdictions. As a council of government, ABAG are eligible for the Department of Housing and Community Development's Regional Early Impact Planning Grant Program (REAP). In response to the state's housing crisis, REAP was created to accelerate housing production and facilitate compliance in implementing the sixth cycle of the Housing Element and Regional Housing Needs Allocation (RHNA). In late 2021, the City of Milpitas applied for a suballocation of the Regional Early Impact Planning (REAP) grant through ABAG.

The City of Milpitas requested REAP funds for three purposes (Attachment 1). First, to procure a consultant to create an Assessment of Fair Housing (AFH) in preparation for the draft Housing Element. The assessment will consist of community engagement, racially disaggregated data analysis and mapping, collection and analysis of supplemental local data, analysis of contributing factors, development of goals and strategies, production of the AFH report, document translation services, and consultant travel. Second, to partially fund a full-service housing element consultant to manage the project. The consultant, Raimi and Associates is currently reviewing previous Housing Element and related documents, conducting robust and meaningful community engagement, synthesizing stakeholder input, assessing housing needs and constraints, completing a sites inventory analysis per California Department of Housing and Community Development (HCD) guidelines, and identifying goals, policies, and programs with measurable objectives. Additionally, Raimi and Associates has presented at public hearings, coordinated administrative draft reviews with HCD, and will soon prepare all CEQA documentation. Third, the City of Milpitas is exploring possible redevelopment options for the Great Mall. On July 22, 2022, ABAG announced a suballocation award of one-hundred forty-two thousand seven-hundred eighteen dollars (\$142,718) of REAP funding to the City of Milpitas.

Analysis:

REAP funds must be spent to support planning activities that accelerate housing production or facilitate compliance in implementing the sixth cycle of the Housing Element and RHNA. Funds may not be spent to support RHNA appeals or the development of specific housing projects.

In accordance with the REAP grant's eligible activities, the funds will be allocated for the following activities:

- Activities for preparation of the Assessment of Fair Housing
- Housing Element workplan and schedule

- Community engagement strategy
- Housing and special housing needs review
- Housing constraints analysis
- Sites inventory
- Housing Element goals, policies, and programs
- Evaluation of possible redevelopment options for the Great Mall

The City has contracted with Raimi and Associates to support the City in accomplishing the activities listed above. In coordination with ABAG and Raimi and Associates, the City will be on track to complete its Housing Element by early 2023. The REAP grant covers a portion of the contract with Raimi & Associates to prepare the Housing Element and covers the contract with the Lawyers' Committee for Civil Rights Under Law to prepare the Fair Housing Assessment, which is a required component of the Housing Element. ABAG will reimburse the City for all expenses deemed reasonable and necessary. The City of Milpitas is required to submit invoices for Fiscal Year 2021-22 Quarters 2-4 and Fiscal Year 2022-23 Quarter 1.

Policy Alternatives: N/A

Fiscal Impact:

The City received grant funding for the Housing Element and the balance of this professional services contract would be funded from the Affordable Housing Fund 216. The City applied to the Association of Bay Area Governments (ABAG) for Regional Housing Technical Assistance (REAP) non-competitive and competitive grant funding to help fund the development of the Housing Element and Assessment of Fair Housing. ABAG awarded the City a total of \$142,718. Out of this total amount, \$114,378 was awarded for work on the Housing Element. In FY21-22, \$62,823 was already recognized from the award due to performance of Housing Element professional services. In FY22-23, the remainder \$79,895 will be recognized in the grant revenue.

The Housing Element professional services cost is \$431,710 with \$114,378 to be reimbursed using REAP grant funds, the remaining balance of \$317,332 will come from the City's Affordable Housing Fund 216. The fiscal impact is a \$317,332 reduction to the fund balance. If future amendments to the professional services agreement are needed and Council authorizes the City Manager to execute the amendments for an amount up to \$50,000, the fiscal impact would be a maximum of \$50,000 reduction to the fund balance at the time of the amendments.

California Environmental Quality Act:

The actions being considered have no potential for causing a significant effect on the environment and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3). Further, this action does not meet the definition of a project under CEQA Guideline 15378 as it is a government fiscal activity which does not commit to any project that would result in a potentially significant impact on the environment.

Recommendation:

Authorize the City Manager to accept grant funding from the Association of Bay Area Governments (ABAG) for the Management of the Regional Early Impact Planning (REAP) Grant and approve related budget amendments for revenue in the amount of \$142,718.

Attachments:

1. Draft Suballocation Agreement
2. Budget Change Form

☐ Check if City Council Approval required.

Meeting Date: October 04, 2022

Requested by:	Department Head: Alex Andrade	Date: October 04, 2022
Reviewed by:	Finance Director: Lauren Lai	Date: October 04, 2022
Date approved by City Council, if required:		Confirmed by:

FI/24786/V

Form 30-222 (Rev. 1/92)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution to Amend the City of Milpitas Classification Plan to Establish the Position of Risk Analyst and Modify the Salary Schedule Titled “All Job Classifications/Salary Table” to Include the Salary Range for this Classification (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Jeannine Seher, Human Resources Director, 408-586-3086)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/4/2022
	<u>Recommendation:</u> Adopt a resolution amending the Classification Plan to establish the position of Risk Analyst and amend the Salary Schedule titled “All Job Classifications/ Salary Table” to include the salary range for this classification.

Background:

In the 2022-2023 Fiscal Year Budget, the City Council authorized the addition of 1.0 FTE Financial Analyst position. In discussions with Finance Director, Lauren Lai, and after examination of the responsibilities of the position, it was determined that the duties associated with this position are better suited to be classified as a “Risk Analyst” rather than the “Financial Analyst.”

Analysis:

In assessing the needs of the department after the adoption of the 2022-2023 Fiscal Year Budget, Finance Director, Lauren Lai, determined that the classification of “Risk Analyst”, reporting directly under the Budget Manager, rather than the “Financial Analyst” would best meet the needs of the Finance Department. The types of duties that the Risk Analyst would perform have the same level of complexity as the Financial Analyst II but would be more specifically focused on risk management. As such, the proposed salary of the Risk Analyst is reflective of this. The City proposed a salary that aligns internally with the Financial Analyst II classification, with a salary of \$88,368.28 - \$116,319.58.

The City provided the opportunity meet and confer with the Milpitas Mid-Management and Confidential Unit (LIUNA/UPEC Local 792), and it was agreed upon that the City proceed with the “Risk Analyst” classification.

The FY22-23 Adopted Budget and Financial Plan provides authority for the City Manager to amend positions. Specifically, the major changes to the Budget Guidelines include for Council to authorize the City Manager to increase department revenues and appropriations accordingly and execute related agreements as long as no matching funds are required, and/or departments do not require additional funding for ongoing maintenance costs or future replacement costs. However, CalPERS requires that all classifications with their respective salaries be provided on publicly available pay schedules. As such, we are required to amend the salary schedule to add the Risk Analyst classification and salary range.

Fiscal Impact:

There is no fiscal impact associated with this change as the Council has previously authorized the funds for the Financial Analyst in the FY 2022-23 budget.

California Environmental Quality Act:

Approval of the recommendation is not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) as it can be seen with certainty that a discussion about establishing a salary range will not have a significant effect on the environment. Further, the item is not a project pursuant to CEQA Guidelines Section 15378(b)(5) as it involves organizational or

administrative activities of a local government entity that will not result in direct or indirect physical changes in the environment.

Recommendation:

Adopt a resolution amending the Classification Plan to establish the position of Risk Analyst and amend the Salary Schedule titled "All Job Classifications/Salary Table" to include the salary range for this classification.

Attachments:

1. Classification Specification for Risk Analyst
2. Resolution
3. Exhibit A: Salary Table



Risk Analyst

City of Milpitas

Effective: 9/2022

Revised: 10/4/2022

EEOC:

FLSA:

Unit:

Physical:

DEFINITION

This is a journey-level classification. Positions at this level perform the full range of duties as assigned, working independently and exercising judgment and initiative. Employees at this level receive only occasional instruction or assistance as new or unusual situations arise and are expected to be fully aware of the laws and regulations related to the area of assignment, and to become fully aware of City ordinances and policies, able to perform the duties associated with this position. Under direction of the Budget Manager or designee, the Risk Analyst will coordinate and perform responsible, varied, and confidential administrative and technical work in support of the Risk Management program. Incumbent(s) will investigate, evaluate, and resolve claims against the City; provide claims administration, analyze historical claims and provide training on risk management to City departments; consults with City departments to minimize risk and safety exposures. Incumbent(s) will also be responsible for establishing and managing the Risk Committee, which will oversee the Risk Management program at the City and assist with the City's participation in risk joint power of authority (JPA).

DISTINGUISHING CHARACTERISTICS

This classification is distinguished from Budget Manager by the Budget Manager's responsibility for the successful planning and implementation of the citywide budget process and related fiscal programs.

This classification is further distinguished from the Financial Analyst classification by the Financial Analyst's responsibility to perform a wide variety of financial analysis activities.

SUPERVISION RECEIVED AND EXERCISED

Receives direction from the Budget Manager or designee.

AND

May exercise supervision over assigned clerical or technical personnel.

EXAMPLE OF DUTIES – Duties may include, but are not limited to, the following:

- Conduct safety audits; provide safety and risk management training; develop, review, and analyze claims against the City, implement the City risk management programs designed to reduce the frequency and severity of losses throughout the City.

- Analyze historical claims to identify patterns and develop policies and best practices to minimize loss.
- Manage all risk and insurance programs, including insured and self-insured programs; determine appropriate funding and reserve levels for risk and insurance programs; oversee the legal and contractual elements of risk and insurance programs.
- Investigate claims of environmental conditions that could potentially cause injury or illness; interview employees; review documents, complaints, and confer with facilities and health representatives to determine possible actions for mitigation; survey facilities, programs and services to identify potential exposure to claims.
- Analyze self-insured retention levels, excess limits, aggregates, and reserve levels.
- Analyze and present data and statistical information in a clear and concise way.
- Evaluate the cost and benefits of alternate risk financing methods.
- Provide training and assistance to City employees on risk policies and procedures, and processing Claims for Damages.
- Review certificates of insurance for coverage dates, liability coverage amounts, and additional related language to determine financial responsibility.
- Review and analyzes claims against the City with claims administrator for loss control and corrective action; manages activities of liability claims administrator to ensure effective claims processing.
- Assist in administering the City's Injury and Illness Prevention Program.
- Assist in the management and coordination of third-party administrators and legal counsel.
- Verify insurance requirements for contracts, permits, and vendors.
- Perform additional duties of a similar nature as assigned.
- Assist in the City's participation in risk power joint authority program

QUALIFICATIONS

Knowledge of:

- Principles and practices of public agency insurance programs, including claims administration, administration and adjustment, and appropriate reserve setting formulas.

- Financial and legal requirements for developing, implementing, and administering self-funded plans, including liability, workers' compensation and others.
- Research and analytical techniques applied to risk management.
- General insurance principles, practices, and terminology.
- Analysis of insurance provider ratings for those providing proof of insurance.
- Federal, state, and local laws and regulations relative to risk management.
- Methods and techniques of tracking, recording, and presenting statistical data.
- Principles and practices associated with training.
- Legal and political environment affecting local government.
- General methods of tactful public communication.
- Practical application of computers and peripheral equipment.
- English grammar, punctuation, spelling, and usage.
- Effective supervisory practices.

Ability to:

- Analyze and present data and information.
- Prepare complex reports related to the risk management program for department head, City Manager and City Council.
- Evaluate, explain and recommend technical insurance policies, rules, and procedures.
- Evaluate, explain and recommend **various** insurance programs and options for the City.
- Interpret and apply laws, regulations, ordinances, and rules relating to general liability, safety and workers' comp?
- Read and interpret rules, regulations, and legislation/laws.
- Keep abreast of changing rules, laws, and best practices in the area of risk management.
- Provide training to City departments and employees in the area of risk management.
- Develop and recommend policies and procedures related to assigned operations.
- Analyze claims in accordance with applicable laws and City procedures and policies; exercise independent judgment in resolving claims.
- Research regulations, procedures and/or technical reference materials; prepare narrative and statistical reports.
- Handle sensitive and confidential information with discretion.
- Meet deadlines as prescribed.
- Communicate clearly and concisely, both orally and in writing.
- Establish, maintain, and foster positive and effective working relationships with those contacted in the course of work.
- Use standardized office machines and equipment.
- Use desktop applications and computer software including advanced Excel and specialized City software.

EDUCATION AND EXPERIENCE

Education: Bachelor's degree from an accredited college or university with major coursework in finance, public administration, business administration, risk management, industrial hygiene or safety, human resources management, or a closely related field of study.

Experience: Three years of professional level experience in the field of risk management, safety, general liability, property damage claims processing, or contract insurance administration and analysis, or insurance is required. Designation as an Associate in Risk Management by the Insurance Institute of America and experience in a public agency are desired.

LICENSE OR CERTIFICATE

- Possession and maintenance of a valid California Driver's License is required.

SPECIAL REQUIREMENTS

Essential duties require the following physical abilities and work environment

Ability to work in a standard office environment; able to independently travel to various locations within and outside the City of Milpitas.

Work unusual hours, weekends and overtime in the performance of duties in order to meet deadlines and achieve objectives.

Approved by:

City Manager

Date

Human Resources Director

Date

In compliance with the Americans with Disabilities Act, the City of Milpitas will provide reasonable accommodation to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the Human Resources Department.

The City of Milpitas is an Equal Opportunity Employer.

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING
RESOLUTION NO. 1626, THE CLASSIFICATION PLAN, TO APPROVE AND ADOPT
THE CLASSIFICATIONS PAY SCHEDULES AND AMEND BUDGETED, ALLOCATED
POSITIONS**

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

WHEREAS, amendments to the Classification Plan are necessary to account for changes within the organization, transfer of duties, new job responsibilities, and adjustments to salary ranges; and

WHEREAS, the FY 2022/23 Adopted Budget included funding for and added one (1) full-time equivalent (FTE) Financial Analyst position in the Finance Department; and,

WHEREAS, the Human Resources Department, in conjunction with the Finance Department, believes the classification of risk analyst is more suitable and better describes the duties and responsibilities of the position; and,

WHEREAS, the City is required to publish publicly available approved and adopted pay schedule(s) for all positions within the Classification Plan pursuant to the California Code of Regulations, 2 CCR §570.5.

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) Resolution No. 1626, as amended, is hereby further amended effective October 4, 2022, as set forth below.
 - A. APPROVE AND ADOPT THE PAY SCHEDULE "NEW JOB CLASSIFICATIONS/SALARY TABLE EFFECTIVE OCTOBER 4, 2022":

Adding the classifications of:

1. Risk Analyst, with a salary range of \$88,368.28 - \$116,319.58.

A pay schedule, that includes but is not limited to Classification (Position), Title, Payrate; Hourly, Bi-Weekly, Monthly and Annual Wage, is attached hereto as Exhibit A ("New Job Classifications/Salary Table effective 07-03-2022"). Exhibit A also reflects job title changes to various positions as negotiated with the respective bargaining units and/or as reflected as minimum qualifications in the job specification.

PASSED AND ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

Classification	Union Code	Occ Code	Pay Grade	A-Hourly	A-BiWeekly	A-Annual	B-Hourly	B-BiWeekly	B-Annual	C-Hourly	C-BiWeekly	C-Annual	D-Hourly	D-BiWeekly	D-Annual	E-Hourly	E-BiWeekly	E-Annual
Accountant	50	2101	500	47.898875	3831.91	99629.66	50.2935	4023.48	104610.48	52.798	4223.84	109819.84	55.45025	4436.02	115336.52	58.21275	4657.02	121082.52
Accounting Technician I	50	6104	513	31.19425	2495.54	64884.04	32.75425	2620.34	68128.84	34.392	2751.36	71535.36	36.1115	2888.92	75111.92	37.97125	3033.37	78867.62
Accounting Technician II	50	6105	514	34.3135	2745.08	71372.08	36.029625	2882.37	74941.62	37.831125	3026.49	78688.74	39.723125	3177.85	82624.1	41.70825	3336.66	86753.16
Administrative Analyst I	80	2102	801	41.19875	3295.9	85693.4	0	0	0	0	0	0	0	0	0	54.2355	4338.84	112809.84
Administrative Analyst II	80	2103	802	45.499125	3639.93	94638.18	0	0	0	0	0	0	0	0	0	59.887375	4790.99	124565.74
Administrative Assistant	80	6111	828	39.304625	3144.37	81753.62	41.269875	3301.59	85841.34	43.333625	3466.69	90133.94	45.5	3640	94640	47.774875	3821.99	99371.74
Adult Crossing Guard	70	8401	725	16.4	1312	34112	0	0	0	0	0	0	0	0	0	18.46	1476.8	38396.8
Adult Crossing Guard Superviso	70	8402	720	17.71	1416.8	36836.8	0	0	0	0	0	0	0	0	0	21.21	1696.8	44116.8
Assistant Chief of Police	60	1405	649	101.902875	8152.23	211957.98	0	0	0	0	0	0	0	0	0	142.664	11413.12	296741.12
Assistant City Attorney	60	1113	645	76.923125	6153.85	160000.1	0	0	0	0	0	0	0	0	0	104.127875	8330.23	216585.98
Assistant City Engineer	60	1205	639	72.455375	5796.43	150707.18	0	0	0	0	0	0	0	0	0	101.4375	8115	210990
Assistant City Manager	60	1104	666	96.52375	7721.9	200769.4	0	0	0	0	0	0	0	0	0	135.133375	10810.67	281077.42
Assistant Engineer	50	2201	502	51.897625	4151.81	107947.06	54.492375	4359.39	113344.14	57.216875	4577.35	119011.1	60.078125	4806.25	124962.5	63.082375	5046.59	131211.34
Assistant Finance Director	60	1109	669	69.463375	5557.07	144483.82	0	0	0	0	0	0	0	0	0	97.251125	7780.09	202282.34
Assistant Fire Marshal	60	2501	632	78.1425	6251.4	162536.4	0	0	0	0	0	0	0	0	0	109.39975	8751.98	227551.48
Assistant Planner	50	2801	503	49.763	3981.04	103507.04	52.252375	4180.19	108684.94	54.855625	4388.45	114099.7	57.59775	4607.82	119803.32	60.478875	4838.31	125796.06
Assistant Pool Manager	70	5609	709	17.45	1396	36296	0	0	0	0	0	0	0	0	0	24.44	1955.2	50835.2
Assistant Water Operator	20	7212	221	42.68093333	3201.07	83227.82	44.81506667	3361.13	87389.38	47.05573333	3529.18	91758.68	49.40826667	3705.62	96346.12	51.87906667	3890.93	101164.18
Assistant Water Operator - 40	20	8611	226	42.67725	3414.18	88768.68	44.815375	3585.23	93215.98	47.051875	3764.15	97867.9	49.41125	3952.9	102775.4	51.881375	4150.51	107913.26
Associate Civil Engineer	50	2202	504	59.682	4774.56	124138.56	62.6665	5013.32	130346.32	65.799875	5263.99	136863.74	69.089875	5527.19	143706.94	72.544625	5803.57	150892.82
Associate Planner	50	2802	505	57.218375	4577.47	119014.22	60.087	4806.96	124980.96	63.0945	5047.56	131236.56	66.241	5299.28	137781.28	69.55175	5564.14	144667.64
Budget Manager	80	1115	839	60.055	4804.4	124914.4	0	0	0	0	0	0	0	0	0	79.05	6324	164424
Building & Housing Director	60	1802	658	83.947625	6715.81	174611.06	0	0	0	0	0	0	0	0	0	117.52675	9402.14	244455.64
Building Inspection Manager	80	3809	848	62.563375	5005.07	130131.82	0	0	0	0	0	0	0	0	0	76.04675	6083.74	158177.24
Building Inspector Apprentice	70	8610	770	28	2240	58240	0	0	0	0	0	0	0	0	0	35	2800	72800
Building Official	60	1804	676	73.841625	5907.33	153590.58	0	0	0	0	0	0	0	0	0	103.37825	8270.26	215026.76
Building Permit Technician	50	5801	508	38.000625	3040.05	79041.3	39.90475	3192.38	83001.88	41.90675	3352.54	87166.04	43.99425	3519.54	91508.04	46.191625	3695.33	96078.58
Building/NP Inspector	50	3801	507	50.367625	4029.41	104764.66	52.8865	4230.92	110003.92	55.53025	4442.42	115502.92	58.307125	4664.57	121278.82	61.222125	4897.77	127342.02
Business Systems Analyst/Dev	80	2119	853	54.920875	4393.67	114235.42	0	0	0	0	0	0	0	0	0	72.292625	5783.41	150368.66
Buyer	80	2106	803	40.82525	3266.02	84916.52	0	0	0	0	0	0	0	0	0	53.73875	4299.1	111776.6
CIP Manager	60	2211	642	63.788875	5103.11	132680.86	0	0	0	0	0	0	0	0	0	89.3115	7144.92	185767.92
Case Manager	50	5612	544	34.04875	2723.9	70821.4	0	0	0	0	0	0	0	0	0	42.492125	3399.37	88383.62
Chief Fire Enforcement Officer	60	1505	656	68.2475	5459.8	141954.8	0	0	0	0	0	0	0	0	0	95.5465	7643.72	198736.72
Chief of Police	60	1402	650	106.994875	8559.59	222549.34	0	0	0	0	0	0	0	0	0	149.793125	11983.45	311569.7
City Attorney	60	1112	644	99.9625	7997	207922	0	0	0	0	0	0	0	0	0	124.953375	9996.27	259903.02
City Clerk	60	1101	605	63.831	5106.48	132768.48	0	0	0	0	0	0	0	0	0	89.3735	7149.88	185896.88
City Manager	60	1102	697	160.7535	12860.28	334367.28	0	0	0	0	0	0	0	0	0	160.7535	12860.28	334367.28
Code Enforcement Officer	50	5804	515	44.04	3523.2	91603.2	46.242625	3699.41	96184.66	48.564625	3885.17	101014.42	50.99275	4079.42	106064.92	53.540625	4283.25	111364.5
Comm Svc Engmnt & Incl Admin	60	1121	659	65.8665	5269.32	137002.32	0	0	0	0	0	0	0	0	0	92.213125	7377.05	191803.3
Communications Dispatch Superv	40	6409	456	55.085125	4406.81	114577.06	57.839375	4627.15	120305.9	60.7315	4858.52	126321.52	63.768125	5101.45	132637.7	66.956625	5356.53	139269.78
Communications Dispatcher	40	6408	455	47.69475	3815.58	99205.08	50.07925	4006.34	104164.84	52.583	4206.64	109372.64	55.21175	4416.94	114840.44	57.9725	4637.8	120582.8
Community Service Officer	50	5807	551	42.1365	3370.92	87643.92	44.243375	3539.47	92026.22	46.455625	3716.45	96627.7	48.77825	3902.26	101458.76	51.2175	4097.4	106532.4
Councilmember	60	1107	699	20.87	417.4	10852.4	0	0	0	0	0	0	0	0	0	20.87	417.4	10852.4
Crime Analyst	80	2105	809	49.318625	3945.49	102582.74	0	0	0	0	0	0	0	0	0	64.9185	5193.48	135030.48
Customer Services Supervisor	80	2127	847	47.823	3825.84	99471.84	0	0	0	0	0	0	0	0	0	62.945625	5035.65	130926.9
Deputy City Attorney	60	1114	646	60.096125	4807.69	124999.94	0	0	0	0	0	0	0	0	0	83.301875	6664.15	173267.9
Deputy City Clerk	80	6102	835	46.962125	3756.97	97681.22	0	0	0	0	0	0	0	0	0	57.082625	4566.61	118731.86
Deputy City Manager	60	1119	672	94.59325	7567.46	196753.96	0	0	0	0	0	0	0	0	0	132.375625	10590.05	275341.3
Deputy Director of IT	60	1123	679	76.44225	6115.38	158999.88	0	0	0	0	0	0	0	0	0	97.89425	7831.54	203620.04
Deputy Fire Chief	60	1504	633	98.466625	7877.33	204810.58	0	0	0	0	0	0	0	0	0	137.85325	11028.26	286734.76
Deputy Public Works Director	60	1207	654	74.46125	5956.9	154879.4	0	0	0	0	0	0	0	0	0	104.245875	8339.67	216831.42
Digital Media Specialist	80	2121	840	42.48475	3398.78	88368.28	0	0	0	0	0	0	0	0	0	55.922875	4473.83	116319.58
Dir of Recr & Community Svcs	60	1208	655	82.20925	6576.74	170995.24	0	0	0	0	0	0	0	0	0	115.31725	9225.38	239859.88
Economic Development Coord	80	8623	852	51.823125	4145.85	107792.1	0	0	0	0	0	0	0	0	0	64.26	5140.8	133660.8
Economic Development Director	60	1206	653	77.21925	6177.54	160616.04	0	0	0	0	0	0	0	0	0	108.106625	8648.53	224861.78
Economic Development Spec	80	8606	850	49.351125	3948.09	102650.34	0	0	0	0	0	0	0	0	0	59.57175	4765.74	123909.24
Electrical/Building Inspector	50	3802	511	52.886375	4230.91	110003.66	55.53025	4442.42	115502.92	58.307	4664.56	121278.56	61.222125	4897.77	127342.02	64.283375	5142.67	133709.42
Emergency Services Coordinator	80	2502	836	54.525	4362	113412	0	0	0	0	0	0	0	0	0	71.76225	5740.98	149265.48
Employee Relations Officer	60	1209	677	63.981625	5118.53	133081.78	0	0	0	0	0	0	0	0	0	89.574125	7165.93	186314.18
Engineering Aide	50	3201	512	41.271875	3301.75	85845.5	43.335625	3466.85	90138.1	45.502125	3640.17	94644.42	47.777	3822.16	99376.16	50.165875	4013.27	104345.02
Engineering Director/City Eng	60	1201	606	83.947625	6715.81	174611.06	0	0	0	0	0	0	0	0	0	117.52675	9402.14	244455.64
Engineering Permit Technician	50	2210	540	37.151875	2972.15	77275.9	39.009625	3120.77	81140.02	40.959875	3276.79	85196.54	43.007375	3440.59	89455.34	45.158	3612.64	93928.64
Entry Firefighter/EMT - 40	10	4512	115	48.542375	3883.39	100968.14	50.484125	4038.73	105006.98	0	0	0	0	0	0	0	0	0
Entry Firefighter/EMT - 56	10	4510	112	34.673125	3883.39	100968.14	36.06008929	4038.73	105006.98	0	0	0	0	0	0	0	0	0
Entry Firefighter/Paramedic-40	10	4513	116	54.367375	4349.39	113084.14	56.542375	4523.39	117608.14	0	0	0	0	0	0	0	0	0

Entry Firefighter/Paramedic-56	10	4511	113	38.83383929	4349.39	113084.14	40.38741071	4523.39	117608.14	0	0	0	0	0	0	0	0	
Entry Level Fire Inspector	10	3508	114	42.32175	3385.74	88029.24	44.437875	3555.03	92430.78	46.659875	3732.79	97052.54	48.992875	3919.43	101905.18	50.974375	4077.95	106026.7
Envir & Regulatory Comply Spec	80	8624	851	52.670875	4213.67	109555.42	0	0	0	0	0	0	0	0	0	69.33	5546.4	144206.4
Environmental Inspector	50	2213	553	52.886375	4230.91	110003.66	55.530625	4442.45	115503.7	58.30725	4664.58	121279.08	61.2225	4897.8	127342.8	64.283375	5142.67	133709.42
Equip Maint Worker I - 40	20	8612	227	39.042375	3123.39	81208.14	40.974875	3277.99	85227.74	43.02725	3442.18	89496.68	45.187375	3614.99	93989.74	47.44375	3795.5	98683
Equip Maint Worker II - 40	20	8613	228	42.931	3434.48	89296.48	45.079625	3606.37	93765.62	47.33575	3786.86	98458.36	49.712	3976.96	103400.96	52.1965	4175.72	108568.72
Equip Maint Worker III - 40	20	8614	229	48.367875	3869.43	100605.18	50.79225	4063.38	105647.88	53.336875	4266.95	110940.7	56.001375	4480.11	116482.86	58.80975	4704.78	122324.28
Equipment Maint. Worker I	20	7202	200	38.80066667	2910.05	75661.3	40.7408	3055.56	79444.56	42.77826667	3208.37	83417.62	44.91706667	3368.78	87588.28	47.1628	3537.21	91967.46
Equipment Maint. Worker II	20	7203	201	42.68093333	3201.07	83227.82	44.81506667	3361.13	87389.38	47.05573333	3529.18	91758.68	49.40826667	3705.62	96346.12	51.87906667	3890.93	101164.18
Equipment Maint. Worker III	20	7204	202	48.08986667	3606.74	93775.24	50.49346667	3787.01	98462.26	53.01853333	3976.39	103386.14	55.66946667	4175.21	108555.46	58.4532	4383.99	113983.74
Executive Assistant	80	6117	812	43.228875	3458.31	89916.06	45.390625	3631.25	94412.5	47.660125	3812.81	99133.06	50.043	4003.44	104089.44	52.54525	4203.62	109294.12
FF/Paramedic Trainee - 40	10	4504	107	52.276375	4182.11	108734.86	52.276375	4182.11	108734.86	52.276375	4182.11	108734.86	52.276375	4182.11	108734.86	52.276375	4182.11	108734.86
FF/Paramedic Trainee - 56	10	4514	155	37.34026786	4182.11	108734.86	37.34026786	4182.11	108734.86	37.34026786	4182.11	108734.86	37.34026786	4182.11	108734.86	37.34026786	4182.11	108734.86
Finance Director	60	1103	627	84.312125	6744.97	175369.22	0	0	0	0	0	0	0	0	0	118.027625	9442.21	245497.46
Finance Manager	60	1116	647	59.50375	4760.3	123767.8	0	0	0	0	0	0	0	0	0	83.30575	173275.96	
Financial Analyst I	80	2125	844	38.468125	3077.45	80013.7	0	0	0	0	0	0	0	0	0	50.635375	4050.83	105321.58
Financial Analyst II	80	2126	845	42.48475	3398.78	88368.28	0	0	0	0	0	0	0	0	0	55.922875	4473.83	116319.58
Fire Battalion Chief	10	2508	153	52.44267857	5873.58	152713.08	0	0	0	0	0	0	0	0	0	73.41973214	8223.01	213798.26
Fire Battalion Chief - 40	10	2509	154	73.41975	5873.58	152713.08	0	0	0	0	0	0	0	0	0	102.787625	8223.01	213798.26
Fire Captain	10	2504	100	45.89633929	5140.39	133650.14	48.13383929	5390.99	140165.74	50.48321429	5654.12	147007.12	52.94973214	5930.37	154189.62	55.53991071	6220.47	161732.22
Fire Captain - 40	10	2507	108	64.254875	5140.39	133650.14	67.387375	5390.99	140165.74	70.6765	5654.12	147007.12	74.129625	5930.37	154189.62	77.755875	6220.47	161732.22
Fire Chief	60	1502	630	108.506025	8684.85	225806.1	0	0	0	0	0	0	0	0	0	151.98525	12158.82	316129.32
Fire Engineer/EMT	10	4501	102	40.47142857	4532.8	117852.8	42.43767857	4753.02	123578.52	44.50196429	4984.22	129589.72	46.66946429	5226.98	135901.48	48.94535714	5481.88	142528.88
Fire Engineer/EMT - 40	10	4515	156	56.66	4532.8	117852.8	59.41275	4753.02	123578.52	62.30275	4984.22	129589.72	65.33725	5226.98	135901.48	68.5235	5481.88	142528.88
Fire Engineer/Paramedic	10	4505	151	45.18964286	5061.24	131592.24	47.39214286	5307.92	138005.92	49.70410714	5566.86	144738.36	52.13142857	5838.72	151806.72	54.680625	6124.23	159229.98
Fire Prevention Inspector	10	3501	106	64.881625	5190.53	134953.78	68.045375	5443.63	141534.38	71.367125	5709.37	148443.62	74.854875	5988.39	155698.14	78.517125	6281.37	163315.62
Fire Protection Engineer	10	3507	110	64.881625	5190.53	134953.78	68.045375	5443.63	141534.38	71.367125	5709.37	148443.62	74.854875	5988.39	155698.14	78.517125	6281.37	163315.62
Firefighter/EMT	10	4502	103	37.82491071	4236.39	110146.14	39.658125	4441.71	115484.46	41.58357143	4657.36	121091.36	43.60544643	4883.81	126979.06	45.7275	5121.48	133158.48
Firefighter/EMT Trainee - 40	10	4509	109	46.6755	3734.04	97085.04	46.6755	3734.04	97085.04	46.6755	3734.04	97085.04	46.6755	3734.04	97085.04	46.6755	3734.04	97085.04
Firefighter/Paramedic	10	4503	104	42.22571429	4729.28	122961.28	44.27857143	4959.2	128939.2	46.43526786	5200.75	135219.5	48.69910714	5454.3	141811.8	51.07678571	5720.6	148735.6
Fitness Instructor	70	5620	713	35	2800	72800	0	0	0	0	0	0	0	0	0	75	6000	156000
Fleet Maint Worker I - 40	20	8615	230	37.270375	2981.63	77522.38	39.138375	3131.07	81407.82	41.092125	3287.37	85471.62	43.14425	3451.54	89740.04	45.307125	3624.57	94238.82
Fleet Maint Worker II - 40	20	8616	231	40.993875	3279.51	85267.26	43.045875	3443.67	89535.42	45.19625	3615.7	94008.2	47.4575	3796.6	98711.6	49.82925	3986.34	103644.84
Fleet Maint Worker III - 40	20	8617	232	47.150125	3772.01	98072.26	49.50975	3960.78	102980.28	51.979625	4158.37	108117.62	54.57225	4365.78	113510.28	57.3125	4585	119210
Fleet Maintenance Worker I	20	7207	213	37.27066667	2795.3	72677.8	39.13373333	2935.03	76310.78	41.0908	3081.81	80127.06	43.14453333	3235.84	84131.84	45.302	3397.65	88338.9
Fleet Maintenance Worker II	20	7208	214	40.99786667	3074.84	79945.84	43.0472	3228.54	83942.04	45.2	3390	88140	47.46013333	3559.51	92547.26	49.83213333	3737.41	97172.66
Fleet Maintenance Worker III	20	7209	215	47.14693333	3536.02	91936.52	49.50413333	3712.81	96533.06	51.97893333	3898.42	101358.92	54.57773333	4093.33	106426.58	57.3076	4298.07	111749.82
GIS Technician	50	2212	552	51.897625	4151.81	107947.06	54.492375	4359.39	113344.14	57.21725	4577.38	119011.88	60.077875	4806.23	124961.98	63.082625	5046.61	131211.86
Hazardous Materials Inspector	10	3502	105	64.881625	5190.53	134953.78	68.045375	5443.63	141534.38	71.367125	5709.37	148443.62	74.854875	5988.39	155698.14	78.517125	6281.37	163315.62
Housing Authority Adminr	60	1120	673	62.118125	4969.45	129205.7	0	0	0	0	0	0	0	0	0	86.964875	6957.19	180886.94
Human Resources Analyst I	80	2124	843	41.19875	3295.9	85693.4	0	0	0	0	0	0	0	0	0	54.2355	4338.84	112809.84
Human Resources Analyst II	80	2123	842	45.499125	3639.93	94638.18	0	0	0	0	0	0	0	0	0	59.887375	124565.74	
Human Resources Assistant	80	2108	846	29.34775	2347.82	61043.32	30.814125	2465.13	64093.38	32.35475	2588.38	67297.88	33.972625	2717.81	70663.06	35.671125	2853.69	74195.94
Human Resources Director	60	1105	613	83.83775	6707.02	174382.52	0	0	0	0	0	0	0	0	0	117.37325	9389.86	244136.36
Human Resources Technician	80	2107	816	35.595125	2847.61	74037.86	37.382625	2990.61	77755.86	39.243375	3139.47	81626.22	41.21325	3297.06	85723.56	43.2685	3461.48	89998.48
I T Director	60	2113	624	82.734875	6618.79	172088.54	0	0	0	0	0	0	0	0	0	115.828625	9266.29	240923.54
I T Manager	80	2116	819	62.022625	4961.81	129007.06	0	0	0	0	0	0	0	0	0	81.6445	6531.56	169820.56
I T Technician	50	3101	542	41.29175	3303.34	85886.84	43.356125	3468.49	90180.74	45.523375	3641.87	94688.62	47.799625	3823.97	99423.22	50.189875	4015.19	104394.94
Information Services Analyst	80	2118	831	52.1745	4173.96	108522.96	0	0	0	0	0	0	0	0	0	68.677	5494.16	142848.16
Junior Engineer	50	2203	519	47.179375	3774.35	98133.1	49.5385	3963.08	103040.08	52.015375	4161.23	108191.98	54.616125	4369.29	113601.54	57.347	4587.76	119281.76
Junior Planner	50	2804	520	42.715875	3417.27	88849.02	44.851875	3588.15	93291.9	47.09425	3767.54	97956.04	49.449625	3955.97	102855.22	51.9215	4153.72	107996.72
Legal Assistant	60	1124	689	39.304625	3144.37	81753.62	41.269875	3301.59	85841.34	43.333625	3466.69	90133.94	45.5	3640	94640	47.774875	3821.99	99371.74
Lifeguard	70	5610	710	16.4	1312	34112	0	0	0	0	0	0	0	0	0	21.56	1724.8	44844.8
Maint Worker III - 40	20	8619	234	40.145875	3211.67	83503.42	42.15625	3372.5	87685	44.26275	3541.02	92066.52	46.47775	3718.22	96673.72	48.801125	3904.09	101506.34
Maintenance Assistant	20	8625	238	24.48	1958.4	50918.4	25.64	2051.2	53331.2	26.84	2147.2	55827.2	28.11	2248.8	58468.8	29.43	2354.4	61214.4
Maintenance Custodian I	20	8101	203	28.59653333	2144.74	55763.24	30.0264	2251.98	58551.48	31.528	2364.6	61479.6	33.1044	2482.83	64553.58	34.7596	2606.97	67781.22
Maintenance Custodian I - 40	20	8107	222	28.59675	2287.74	59481.24	30.02625	2402.1	62454.6	31.52775	2522.22	65577.72	33.104375	2648.35	68857.1	34.75925	2780.74	72299.24
Maintenance Custodian II	20	8102	204	31.45693333	2359.27	61341.02	33.02933333	2477.2	64407.2	34.68106667	2601.08	67628.08	36.41413333	2731.06				

Maintenance Worker/Seasonal	70	8207	760	19.88	1590.4	41350.4	0	0	0	0	0	0	0	0	0	24.85	1988	51688
Management Analyst	80	2128	854	54.621	4369.68	113611.68	0	0	0	0	0	0	0	0	0	76.486125	6118.89	159091.14
Marketing Coordinator	50	5614	548	40.09625	3207.7	83400.2	42.101	3368.08	87570.08	44.205875	3536.47	91948.22	46.41625	3713.3	96545.8	48.737125	3898.97	101373.22
Mayor	60	1118	696	26.094	521.88	13568.88	0	0	0	0	0	0	0	0	0	26.094	521.88	13568.88
Office Assistant I	50	6108	516	27.126375	2170.11	56422.86	28.4825	2278.6	59243.6	29.906875	2392.55	62206.3	31.401625	2512.13	65315.38	32.971875	2637.75	68581.5
Office Assistant II	50	6109	517	29.837625	2387.01	62062.26	31.329	2506.32	65164.32	32.896375	2631.71	68424.46	34.541125	2763.29	71845.54	36.267375	2901.39	75436.14
Office Specialist	50	6110	518	34.313125	2745.05	71371.3	36.02925	2882.34	74940.84	37.831125	3026.49	78688.74	39.723125	3177.85	82624.1	41.70825	3336.66	86753.16
Patrol Officer	40	4401	404	50.99375	4079.5	106067	53.543375	4283.47	111370.22	56.22025	4497.62	116938.12	59.031375	4722.51	122785.26	61.9825	4958.6	128293.6
Patrol Officer Trainee	40	4402	458	49.898625	3991.89	103789.14	52.392625	4191.41	108976.66	55.012875	4401.03	114426.78	57.763125	4621.05	120147.3	60.65075	4852.06	126153.56
Payroll Specialist	50	5102	546	36.64725	2931.78	76226.28	38.479625	3078.37	80037.62	40.4035	3232.28	84039.28	42.423875	3393.91	88241.66	44.544375	3563.55	92652.3
Plan Check Engineer	50	3807	521	61.0755	4886.04	127037.04	64.122875	5129.83	133375.58	67.333375	5386.67	140053.42	70.694625	5655.57	147044.82	74.27575	5942.06	154493.56
Plan Checker	50	3803	522	52.08	4166.4	108326.4	54.683375	4374.67	113741.42	57.42225	4593.78	119438.28	60.284875	4822.79	125392.54	63.307625	5064.61	131679.86
Plan Review Manager	60	1210	678	65.183	5214.64	135580.64	0	0	0	0	0	0	0	0	0	84.7765	6782.12	176335.12
Planning Commissioners	70	1108	698	1	20	520	0	0	0	0	0	0	0	0	0	1	20	520
Planning Director	60	1803	607	83.947625	6715.81	174611.06	0	0	0	0	0	0	0	0	0	117.52675	9402.14	244455.64
Planning Manager	60	2803	602	63.981625	5118.53	133081.78	0	0	0	0	0	0	0	0	0	89.574125	7165.93	186314.18
Planning Technician	50	2813	554	38.000625	3040.05	79041.3	39.90475	3192.38	83001.88	41.90675	3352.54	87166.04	43.99425	3519.54	91508.04	46.191625	3695.33	96078.58
Police Assistant	40	6401	450	48.455125	3876.41	100786.66	50.877375	4070.19	105824.94	53.421125	4273.69	111115.94	56.0925	4487.4	116672.4	58.89725	4711.78	122506.28
Police Captain	60	1401	651	97.046875	7763.75	201857.5	0	0	0	0	0	0	0	0	0	135.865	10869.2	282599.2
Police Clerk I	40	6402	451	34.732125	2778.57	72242.82	36.468875	2917.51	75855.26	38.292125	3063.37	79647.62	40.206875	3216.55	83630.3	42.216375	3377.31	87810.06
Police Clerk II	40	6403	452	38.2045	3056.36	79465.36	40.11575	3209.26	83440.76	42.121375	3369.71	87612.46	44.22775	3538.22	91993.72	46.438125	3715.05	96591.3
Police Clerk Supervisor	40	6404	454	44.127125	3530.17	91784.42	46.333875	3706.71	96374.46	48.65	3892	101192	51.08275	4086.62	106252.12	53.63675	4290.94	111564.44
Police Evidence Technician	40	8607	459	40.516875	3241.35	84275.1	42.542375	3403.39	88488.14	44.66975	3573.58	92913.08	46.9035	3752.28	97559.28	49.2485	3939.88	102436.88
Police Lieutenant	40	2402	400	78.217	6257.36	162691.36	82.127875	6570.23	170825.98	86.234625	6898.77	179368.02	90.546625	7243.73	188336.98	95.073625	7605.89	197753.14
Police Officer	40	4403	403	55.762125	4460.97	115985.22	58.551125	4684.09	121786.34	61.478375	4918.27	127875.02	64.55175	5164.14	134267.64	67.780125	5422.41	140982.66
Police Officer Trainee	40	4404	457	54.5645	4365.16	113494.16	57.293375	4583.47	119170.22	60.1585	4812.68	125129.68	63.166	5053.28	131385.28	66.32425	5305.94	137954.44
Police Sergeant	40	4405	401	67.36225	5388.98	140113.48	70.7305	5658.44	147119.44	74.266875	5941.35	154475.1	77.98125	6238.5	162201	81.88025	6550.42	170310.92
Police Support Services Mgr	60	1404	657	62.051125	4964.09	129066.34	0	0	0	0	0	0	0	0	0	86.8755	6950.04	180701.04
Pool Manager	70	5608	708	18.74	1499.2	38979.2	0	0	0	0	0	0	0	0	0	26.23	2098.4	54558.4
Principal Civil Engineer	80	2204	822	65.183	5214.64	135580.64	0	0	0	0	0	0	0	0	0	84.7765	6782.12	176335.12
Principal Planner	80	2811	823	67.20525	5376.42	139786.92	0	0	0	0	0	0	0	0	0	81.396	6511.68	169303.68
Program Coordinator	50	5606	523	37.393125	2991.45	77777.7	0	0	0	0	0	0	0	0	0	49.2205	3937.64	102378.64
Public Information Officer	60	1122	674	61.5825	4926.6	128091.6	0	0	0	0	0	0	0	0	0	86.215625	6897.25	179328.5
Public Services Assistant I	50	6601	524	31.19425	2495.54	64884.04	32.75425	2620.34	68128.84	34.39225	2751.38	71535.88	36.11175	2888.94	75112.44	37.917125	3033.37	78867.62
Public Services Assistant II	50	6602	525	34.3135	2745.08	71372.08	36.029625	2882.37	74941.62	37.831	3026.48	78688.48	39.72325	3177.86	82624.36	41.70825	3336.66	86753.16
Public Works Director	60	1204	635	86.319875	6905.59	179545.34	0	0	0	0	0	0	0	0	0	120.848125	9667.85	251364.1
Public Works Inspector	50	3202	526	50.367625	4029.41	104764.66	52.8865	4230.92	110003.92	55.53025	4442.42	115502.92	58.307125	4664.57	121278.82	61.222125	4897.77	127342.02
Public Works Manager	60	1117	648	57.452125	4596.17	119500.42	0	0	0	0	0	0	0	0	0	80.432875	6434.63	167300.38
Purchasing Agent	80	1106	826	53.812	4304.96	111928.96	0	0	0	0	0	0	0	0	0	69.4025	5552.2	144357.2
Recreation Administrative Asst	70	5619	712	16.4	1312	34112	0	0	0	0	0	0	0	0	0	21.56	1724.8	44844.8
Recreation Attendant	70	5618	711	16.4	1312	34112	0	0	0	0	0	0	0	0	0	21.56	1724.8	44844.8
Recreation Instructors	70	5607	707	18.82	1505.6	39145.6	0	0	0	0	0	0	0	0	0	37.64	3011.2	78291.2
Recreation Leader	70	5617	706	16.4	1312	34112	0	0	0	0	0	0	0	0	0	21.56	1724.8	44844.8
Recreation Services Supervisor	80	2601	827	51.40425	4112.34	106920.84	0	0	0	0	0	0	0	0	0	67.654875	5412.39	140722.14
Recreation Svcs Assistant I	50	8601	527	17.632375	1410.59	36675.34	18.51375	1481.1	38508.6	19.44	1555.2	40435.2	20.4115	1632.92	42455.92	21.432625	1714.61	44579.86
Recreation Svcs Assistant II	50	8602	528	20.93525	1674.82	43545.32	21.98425	1758.74	45727.24	23.082875	1846.63	48012.38	24.237625	1939.01	50414.26	25.448875	2035.91	52933.66
Recreation Svcs Assistant III	50	8603	529	24.064625	1925.17	50054.42	25.26725	2021.38	52555.88	26.53075	2122.46	55183.96	27.857125	2228.57	57942.82	29.2505	2340.04	60841.04
Recreation Svcs Assistant IV	50	8604	530	28.23425	2258.74	58727.24	29.64575	2371.66	61663.16	31.128	2490.24	64746.24	32.684625	2614.77	67984.02	34.318625	2745.49	71382.74
Retired Annuitant - Extra Help	70	5107	747	50	4000	104000	0	0	0	0	0	0	0	0	0	125	10000	260000
Retired Annuitant - Interim	70	5108	748	50	4000	104000	0	0	0	0	0	0	0	0	0	125	10000	260000
Risk Analyst	80	2130	857	42.48475	3398.78	88368.28	0	0	0	0	0	0	0	0	0	55.922875	4473.83	116319.58
Senior Accountant	80	2110	829	47.823	3825.84	99471.84	0	0	0	0	0	0	0	0	0	62.945625	5035.65	130926.9
Senior Accounting Technician	50	6106	539	37.744875	3019.59	78509.34	39.6325	3170.6	82435.6	41.614	3329.12	86557.12	43.695125	3495.61	90885.86	45.879375	3670.35	95429.1
Senior Administrative Analyst	80	2112	834	52.822125	4225.77	109870.02	0	0	0	0	0	0	0	0	0	69.532625	5562.61	144627.86
Senior Building Inspector	50	3804	531	58.17425	4653.94	121002.44	61.08375	4886.7	127054.2	64.1375	5131	133406	67.344	5387.52	140075.52	70.711375	5656.91	147079.66
Senior Buyer	80	2129	856	50.761	4060.88	105582.88	0	0	0	0	0	0	0	0	0	61.79975	4943.98	128543.48
Senior Executive Assistant	80	6123	855	45.499125	3639.93	94638.18	0	0	0	0	0	0	0	0	0	59.887375	4790.99	124565.74
Senior HR Analyst	80	2122	841	49.319	3945.52	102583.52	0	0	0	0	0	0	0	0	0	64.9185	5193.48	135030.48
Senior Plan Check Engineer	50	3806	534	67.182875	5374.63	139740.38	70.544	5643.52	146731.52	74.068	5925.44	154061.44	77.767625	6221.41	161756.66	81.655125	6532.41	169842.66
Senior Planner	80	2805	830	61.609625	4928.77	128148.02	0	0	0	0	0	0	0	0	0	74.889	5991.12	155769.12
Senior Public Works Inspector	50	3203	535	58.174625	4653.97	121003.22	61.08375	4886.7	127054.2	64.137625	5131.01	133406.26	67.344	5387.52	140075.52	70.711375	5656.91	147079.66
Senior Public Works Lead	20	8609	225	53.220125	4257.61	110697.86	55.881125	4470.49	116232.74	58.67525	4694.02	122044.52	61.60875	4928.7	128146.2	64.691	5175.28	134557.28
Special Project Associate	70	5105	750	20	1600	41600	0	0	0	0	0	0	0	0	0	50	4000	104000
Special Project Associate	70	8605	750															

Sr. Special Projects Associate	70 5106	749	50	4000	104000	0	0	0	0	0	0	0	0	0	125	10000	260000
Staff Assistant	70 5104	745	16.4	1312	34112	0	0	0	0	0	0	0	0	0	24.64	1971.2	51251.2
Student Intern	70 5103	740	16.4	1312	34112	0	0	0	0	0	0	0	0	0	24.64	1971.2	51251.2
Transporation & Traffic Mgr	60 1202	675	61.5825	4926.6	128091.6	0	0	0	0	0	0	0	0	0	86.215625	6897.25	179328.5
Water Meter Technician I	20 8104	216	31.4556	2359.17	61338.42	33.02933333	2477.2	64407.2	34.68093333	2601.07	67627.82	36.41413333	2731.06	71007.56	38.2352	2867.64	74558.64
Water Meter Technician I -40	20 8620	235	31.458	2516.64	65432.64	33.031	2642.48	68704.48	34.677625	2774.21	72129.46	36.41025	2912.82	75733.32	38.241375	3059.31	79542.06
Water Meter Technician II	20 8105	217	34.60213333	2595.16	67474.16	36.33173333	2724.88	70846.88	38.14813333	2861.11	74388.86	40.05573333	3004.18	78108.68	42.05893333	3154.42	82014.92
Water Meter Technician II -40	20 8621	236	34.60375	2768.3	71975.8	36.336625	2906.93	75580.18	38.143	3051.44	79337.44	40.06	3204.8	83324.8	42.063	3365.04	87491.04
Water Systems Operator	20 7211	219	48.08973333	3606.73	93774.98	50.48906667	3786.68	98453.68	53.0184	3976.38	103385.88	55.66946667	4175.21	108555.46	58.4532	4383.99	113983.74
Water Systems Operator - 40	20 8622	237	48.09075	3847.26	100028.76	50.490625	4039.25	105020.5	53.014125	4241.13	110269.38	55.6715	4453.72	115796.72	58.4525	4676.2	121581.2

CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Effective 07/03/2022

Item # C12.

				Step A			Step B			Step C			Step D			Step E		
Classification	Union Code	Occ Code	Pay Grade	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual
Accountant	50	2101	500	47.90	3,831.91	99,629.66	50.29	4,023.48	104,610.48	52.80	4,223.84	109,819.84	55.45	4,436.02	115,336.52	58.21	4,657.02	121,082.52
Accounting Technician I	50	6104	513	31.19	2,495.54	64,884.04	32.75	2,620.34	68,128.84	34.39	2,751.36	71,535.36	36.11	2,888.92	75,111.92	37.92	3,033.37	78,867.62
Accounting Technician II	50	6105	514	34.31	2,745.08	71,372.08	36.03	2,882.37	74,941.62	37.83	3,026.49	78,688.74	39.72	3,177.85	82,624.10	41.71	3,336.66	86,753.16
Administrative Analyst I	80	2102	801	41.20	3,295.90	85,693.40	-	-	-	-	-	-	-	-	-	54.24	4,338.84	112,809.84
Administrative Analyst II	80	2103	802	45.50	3,639.93	94,638.18	-	-	-	-	-	-	-	-	-	59.89	4,790.99	124,565.74
Administrative Assistant	80	6111	828	39.30	3,144.37	81,753.62	41.27	3,301.59	85,841.34	43.33	3,466.69	90,133.94	45.50	3,640.00	94,640.00	47.77	3,821.99	99,371.74
Adult Crossing Guard	70	8401	725	16.40	1,312.00	34,112.00	-	-	-	-	-	-	-	-	-	18.46	1,476.80	38,396.80
Adult Crossing Guard Superviso	70	8402	720	17.71	1,416.80	36,836.80	-	-	-	-	-	-	-	-	-	21.21	1,696.80	44,116.80
Assistant Chief of Police	60	1405	649	101.90	8,152.23	211,957.98	-	-	-	-	-	-	-	-	-	142.66	11,413.12	296,741.12
Assistant City Attorney	60	1113	645	76.92	6,153.85	160,000.10	-	-	-	-	-	-	-	-	-	104.13	8,330.23	216,585.98
Assistant City Engineer	60	1205	639	72.46	5,796.43	150,707.18	-	-	-	-	-	-	-	-	-	101.44	8,115.00	210,990.00
Assistant City Manager	60	1104	666	96.52	7,721.90	200,769.40	-	-	-	-	-	-	-	-	-	135.13	10,810.67	281,077.42
Assistant Engineer	50	2201	502	51.90	4,151.81	107,947.06	54.49	4,359.39	113,344.14	57.22	4,577.35	119,011.10	60.08	4,806.25	124,962.50	63.08	5,046.59	131,211.34
Assistant Finance Director	60	1109	669	69.46	5,557.07	144,483.82	-	-	-	-	-	-	-	-	-	97.25	7,780.09	202,282.34
Assistant Fire Marshal	60	2501	632	78.14	6,251.40	162,536.40	-	-	-	-	-	-	-	-	-	109.40	8,751.98	227,551.48
Assistant Planner	50	2801	503	49.76	3,981.04	103,507.04	52.25	4,180.19	108,684.94	54.86	4,388.45	114,099.70	57.60	4,607.82	119,803.32	60.48	4,838.31	125,796.06
Assistant Pool Manager	70	5609	709	17.45	1,396.00	36,296.00	-	-	-	-	-	-	-	-	-	24.44	1,955.20	50,835.20
Assistant Water Operator	20	7212	221	42.68	3,201.07	83,227.82	44.82	3,361.13	87,389.38	47.06	3,529.18	91,758.68	49.41	3,705.62	96,346.12	51.88	3,890.93	101,164.18
Assistant Water Operator - 40	20	8611	226	42.68	3,414.18	88,768.68	44.82	3,585.23	93,215.98	47.05	3,764.15	97,867.90	49.41	3,952.90	102,775.40	51.88	4,150.51	107,913.26
Associate Civil Engineer	50	2202	504	59.68	4,774.56	124,138.56	62.67	5,013.32	130,346.32	65.80	5,263.99	136,863.74	69.09	5,527.19	143,706.94	72.54	5,803.57	150,892.82
Associate Planner	50	2802	505	57.22	4,577.47	119,014.22	60.09	4,806.96	124,980.96	63.09	5,047.56	131,236.56	66.24	5,299.28	137,781.28	69.55	5,564.14	144,667.64
Budget Manager	80	1115	839	60.06	4,804.40	124,914.40	-	-	-	-	-	-	-	-	-	79.05	6,324.00	164,424.00
Building & Housing Director	60	1802	658	83.95	6,715.81	174,611.06	-	-	-	-	-	-	-	-	-	117.53	9,402.14	244,455.64
Building Inspection Manager	80	3809	848	62.56	5,005.07	130,131.82	-	-	-	-	-	-	-	-	-	76.05	6,083.74	158,177.24
Building Inspector Apprentice	70	8610	770	28.00	2,240.00	58,240.00	-	-	-	-	-	-	-	-	-	35.00	2,800.00	72,800.00
Building Official	60	1804	676	73.84	5,907.33	153,590.58	-	-	-	-	-	-	-	-	-	103.38	8,270.26	215,026.76
Building Permit Technician	50	5801	508	38.00	3,040.05	79,041.30	39.90	3,192.38	83,001.88	41.91	3,352.54	87,166.04	43.99	3,519.54	91,508.04	46.19	3,695.33	96,078.58
Building/NP Inspector	50	3801	507	50.37	4,029.41	104,764.66	52.89	4,230.92	110,003.92	55.53	4,442.42	115,502.92	58.31	4,664.57	121,278.82	61.22	4,897.77	127,342.02
Business Systems Analyst/Dev	80	2119	853	54.92	4,393.67	114,235.42	-	-	-	-	-	-	-	-	-	72.29	5,783.41	150,368.66
Buyer	80	2106	803	40.83	3,266.02	84,916.52	-	-	-	-	-	-	-	-	-	53.74	4,299.10	111,776.60
CIP Manager	60	2211	642	63.79	5,103.11	132,680.86	-	-	-	-	-	-	-	-	-	89.31	7,144.92	185,767.92
Case Manager	50	5612	544	34.05	2,723.90	70,821.40	-	-	-	-	-	-	-	-	-	42.49	3,399.37	88,383.62
Chief Fire Enforcement Officer	60	1505	656	68.25	5,459.80	141,954.80	-	-	-	-	-	-	-	-	-	95.55	7,643.72	198,736.72
Chief of Police	60	1402	650	106.99	8,559.59	222,549.34	-	-	-	-	-	-	-	-	-	149.79	11,983.45	311,569.70
City Attorney	60	1112	644	99.96	7,997.00	207,922.00	-	-	-	-	-	-	-	-	-	124.95	9,996.27	259,903.02
City Clerk	60	1101	605	63.83	5,106.48	132,768.48	-	-	-	-	-	-	-	-	-	89.37	7,149.88	185,896.88
City Manager	60	1102	697	160.75	12,860.28	334,367.28	-	-	-	-	-	-	-	-	-	160.75	12,860.28	334,367.28
Code Enforcement Officer	50	5804	515	44.04	3,523.20	91,603.20	46.24	3,699.41	96,184.66	48.56	3,885.17	101,014.42	50.99	4,079.42	106,064.92	53.54	4,283.25	111,364.50
Comm Svc Engmt & Incl Admin	60	1121	659	65.87	5,269.32	137,002.32	-	-	-	-	-	-	-	-	-	92.21	7,377.05	191,803.30
Communications Dispatch Superv	40	6409	456	55.09	4,406.81	114,577.06	57.84	4,627.15	120,305.90	60.73	4,858.52	126,321.52	63.77	5,101.45	132,637.70	66.96	5,356.53	139,269.78
Communications Dispatcher	40	6408	455	47.69	3,815.58	99,205.08	50.08	4,006.34	104,164.84	52.58	4,206.64	109,372.64	55.21	4,416.94	114,840.44	57.97	4,637.80	120,582.80
Community Service Officer	50	5807	551	42.14	3,370.92	87,643.92	44.24	3,539.47	92,026.22	46.46	3,716.45	96,627.70	48.78	3,902.26	101,458.76	51.22	4,097.40	106,532.40
Councilmember	60	1107	699	20.87	417.40	10,852.40	-	-	-	-	-	-	-	-	-	20.87	417.40	10,852.40
Crime Analyst	80	2105	809	49.32	3,945.49	102,582.74	-	-	-	-	-	-	-	-	-	64.92	5,193.48	135,030.48
Customer Services Supervisor	80	2127	847	47.82	3,825.84	99,471.84	-	-	-	-	-	-	-	-	-	62.95	5,035.65	130,926.90
Deputy City Attorney	60	1114	646	60.10	4,807.69	124,999.94	-	-	-	-	-	-	-	-	-	83.30	6,664.15	173,267.90
Deputy City Clerk	80	6102	835	46.96	3,756.97	97,681.22	-	-	-	-	-	-	-	-	-	57.08	4,566.61	118,731.86
Deputy City Manager	60	1119	672	94.59	7,567.46	196,753.96	-	-	-	-	-	-	-	-	-	132.38	10,590.05	275,341.30
Deputy Director of IT	60	1123	679	76.44	6,115.38	158,999.88	-	-	-	-	-	-	-	-	-	97.89	7,831.54	203,620.04
Deputy Fire Chief	60	1504	633	98.47	7,877.33	204,810.58	-	-	-	-	-	-	-	-	-	137.85	11,028.26	286,734.76
Deputy Public Works Director	60	1207	654	74.46	5,956.90	154,879.40	-	-	-	-	-	-	-	-	-	104.25	8,339.67	216,831.42
Digital Media Specialist	80	2121	840	42.48	3,398.78	88,368.28	-	-	-	-	-	-	-	-	-	55.92	4,473.83	116,319.58
Dir of Recr & Community Svcs	60	1208	655	82.21	6,576.74	170,995.24	-	-	-	-	-	-	-	-	-	115.32	9,225.38	239,859.88
Economic Development Coord	80	8623	852	51.82	4,145.85	107,792.10	-	-	-	-	-	-	-	-	-	64.26	5,140.80	133,660.80
Economic Development Director	60	1206	653	77.22	6,177.54	160,616.04	-	-	-	-	-	-	-	-	-	108.11	8,648.53	224,861.78
Economic Development Spec	80	8606	850	49.35	3,948.09	102,650.34	-	-	-	-	-	-	-	-	-	59.57	4,765.74	123,909.24
Electrical/Building Inspector	50	3802	511	52.89	4,230.91	110,003.66	55.53	4,442.42	115,502.92	58.31	4,664.56	121,278.56	61.22	4,897.77	127,342.02	64.28	5,142.67	133,709.42
Emergency Services Coordinator	80	2502	836	54.53	4,362.00	113,412.00	-	-	-	-	-	-	-	-	-	71.76	5,740.98	149,265.48
Employee Relations Officer	60	1209	677	63.98	5,118.53	133,081.78	-	-	-	-	-	-	-	-	-	89.57	7,165.93	186,314.18

CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Effective 07/03/2022

Item # C12.

				Step A			Step B			Step C			Step D			Step E		
Classification	Union Code	Occ Code	Pay Grade	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual
Engineering Aide	50	3201	512	41.27	3,301.75	85,845.50	43.34	3,466.85	90,138.10	45.50	3,640.17	94,644.42	47.78	3,822.16	99,376.16	50.17	4,013.27	104,345.02
Engineering Director/City Eng	60	1201	606	83.95	6,715.81	174,611.06	-	-	-	-	-	-	-	-	-	117.53	9,402.14	244,455.64
Engineering Permit Technician	50	2210	540	37.15	2,972.15	77,275.90	39.01	3,120.77	81,140.02	40.96	3,276.79	85,196.54	43.01	3,440.59	89,455.34	45.16	3,612.64	93,928.64
Entry Firefighter/EMT - 40	10	4512	115	48.54	3,883.39	100,968.14	50.48	4,038.73	105,006.98	-	-	-	-	-	-	-	-	-
Entry Firefighter/EMT - 56	10	4510	112	34.67	3,883.39	100,968.14	36.06	4,038.73	105,006.98	-	-	-	-	-	-	-	-	-
Entry Firefighter/Paramedic-40	10	4513	116	54.37	4,349.39	113,084.14	56.54	4,523.39	117,608.14	-	-	-	-	-	-	-	-	-
Entry Firefighter/Paramedic-56	10	4511	113	38.83	4,349.39	113,084.14	40.39	4,523.39	117,608.14	-	-	-	-	-	-	-	-	-
Entry Level Fire Inspector	10	3508	114	42.32	3,385.74	88,029.24	44.44	3,555.03	92,430.78	46.66	3,732.79	97,052.54	48.99	3,919.43	101,905.18	50.97	4,077.95	106,026.70
Envir & Regulatory Comply Spec	80	8624	851	52.67	4,213.67	109,555.42	-	-	-	-	-	-	-	-	-	69.33	5,546.40	144,206.40
Environmental Inspector	50	2213	553	52.89	4,230.91	110,003.66	55.53	4,442.45	115,503.70	58.31	4,664.58	121,279.08	61.22	4,897.80	127,342.80	64.28	5,142.67	133,709.42
Equip Maint Worker I - 40	20	8612	227	39.04	3,123.39	81,208.14	40.97	3,277.99	85,227.74	43.03	3,442.18	89,496.68	45.19	3,614.99	93,989.74	47.44	3,795.50	98,683.00
Equip Maint Worker II - 40	20	8613	228	42.93	3,434.48	89,296.48	45.08	3,606.37	93,765.62	47.34	3,786.86	98,458.36	49.71	3,976.96	103,400.96	52.20	4,175.72	108,568.72
Equip Maint Worker III - 40	20	8614	229	48.37	3,869.43	100,605.18	50.79	4,063.38	105,647.88	53.34	4,266.95	110,940.70	56.00	4,480.11	116,482.86	58.81	4,704.78	122,324.28
Equipment Maint. Worker I	20	7202	200	38.80	2,910.05	75,661.30	40.74	3,055.56	79,444.56	42.78	3,208.37	83,417.62	44.92	3,368.78	87,588.28	47.16	3,537.21	91,967.46
Equipment Maint. Worker II	20	7203	201	42.68	3,201.07	83,227.82	44.82	3,361.13	87,389.38	47.06	3,529.18	91,758.68	49.41	3,705.62	96,346.12	51.88	3,890.93	101,164.18
Equipment Maint. Worker III	20	7204	202	48.09	3,606.74	93,775.24	50.49	3,787.01	98,462.26	53.02	3,976.39	103,886.14	55.67	4,175.21	108,555.46	58.45	4,383.99	113,983.74
Executive Assistant	80	6117	812	43.23	3,458.31	89,916.06	45.39	3,631.25	94,412.50	47.66	3,812.81	99,133.06	50.04	4,003.44	104,089.44	52.55	4,203.62	109,294.12
FF/Paramedic Trainee - 40	10	4504	107	52.28	4,182.11	108,734.86	52.28	4,182.11	108,734.86	52.28	4,182.11	108,734.86	52.28	4,182.11	108,734.86	52.28	4,182.11	108,734.86
FF/Paramedic Trainee - 56	10	4514	155	37.34	4,182.11	108,734.86	37.34	4,182.11	108,734.86	37.34	4,182.11	108,734.86	37.34	4,182.11	108,734.86	37.34	4,182.11	108,734.86
Finance Director	60	1103	627	84.31	6,744.97	175,369.22	-	-	-	-	-	-	-	-	-	118.03	9,442.21	245,497.46
Finance Manager	60	1116	647	59.50	4,760.30	123,767.80	-	-	-	-	-	-	-	-	-	83.31	6,664.46	173,275.96
Financial Analyst I	80	2125	844	38.47	3,077.45	80,013.70	-	-	-	-	-	-	-	-	-	50.64	4,050.83	105,321.58
Financial Analyst II	80	2126	845	42.48	3,398.78	88,368.28	-	-	-	-	-	-	-	-	-	55.92	4,473.83	116,319.58
Fire Battalion Chief	10	2508	153	52.44	5,873.58	152,713.08	-	-	-	-	-	-	-	-	-	73.42	8,223.01	213,798.26
Fire Battalion Chief - 40	10	2509	154	73.42	5,873.58	152,713.08	-	-	-	-	-	-	-	-	-	102.79	8,223.01	213,798.26
Fire Captain	10	2504	100	45.90	5,140.39	133,650.14	48.13	5,390.99	140,165.74	50.48	5,654.12	147,007.12	52.95	5,930.37	154,189.62	55.54	6,220.47	161,732.22
Fire Captain - 40	10	2507	108	64.25	5,140.39	133,650.14	67.39	5,390.99	140,165.74	70.68	5,654.12	147,007.12	74.13	5,930.37	154,189.62	77.76	6,220.47	161,732.22
Fire Chief	60	1502	630	108.56	8,684.85	225,806.10	-	-	-	-	-	-	-	-	-	151.99	12,158.82	316,129.32
Fire Engineer/EMT	10	4501	102	40.47	4,532.80	117,852.80	42.44	4,753.02	123,578.52	44.50	4,984.22	129,589.72	46.67	5,226.98	135,901.48	48.95	5,481.88	142,528.88
Fire Engineer/EMT - 40	10	4515	156	56.66	4,532.80	117,852.80	59.41	4,753.02	123,578.52	62.30	4,984.22	129,589.72	65.34	5,226.98	135,901.48	68.52	5,481.88	142,528.88
Fire Engineer/Paramedic	10	4505	151	45.19	5,061.24	131,592.24	47.39	5,307.92	138,005.92	49.70	5,566.86	144,738.36	52.13	5,838.72	151,806.72	54.68	6,124.23	159,229.98
Fire Prevention Inspector	10	3501	106	64.88	5,190.53	134,953.78	68.05	5,443.63	141,534.38	71.37	5,709.37	148,443.62	74.85	5,988.39	155,698.14	78.52	6,281.37	163,315.62
Fire Protection Engineer	10	3507	110	64.88	5,190.53	134,953.78	68.05	5,443.63	141,534.38	71.37	5,709.37	148,443.62	74.85	5,988.39	155,698.14	78.52	6,281.37	163,315.62
Firefighter/EMT	10	4502	103	37.82	4,236.39	110,146.14	39.66	4,441.71	115,484.46	41.58	4,657.36	121,091.36	43.61	4,883.81	126,979.06	45.73	5,121.48	133,158.48
Firefighter/EMT Trainee - 40	10	4509	109	46.68	3,734.04	97,085.04	46.68	3,734.04	97,085.04	46.68	3,734.04	97,085.04	46.68	3,734.04	97,085.04	46.68	3,734.04	97,085.04
Firefighter/Paramedic	10	4503	104	42.23	4,729.28	122,961.28	44.28	4,959.20	128,939.20	46.44	5,200.75	135,219.50	48.70	5,454.30	141,811.80	51.08	5,720.60	148,735.60
Fitness Instructor	70	5620	713	35.00	2,800.00	72,800.00	-	-	-	-	-	-	-	-	-	75.00	6,000.00	156,000.00
Fleet Maint Worker I -40	20	8615	230	37.27	2,981.63	77,522.38	39.14	3,131.07	81,407.82	41.09	3,287.37	85,471.62	43.14	3,451.54	89,740.04	45.31	3,624.57	94,238.82
Fleet Maint Worker II - 40	20	8616	231	40.99	3,279.51	85,267.26	43.05	3,443.67	89,535.42	45.20	3,615.70	94,008.20	47.46	3,796.60	98,711.60	49.83	3,986.34	103,644.84
Fleet Maint Worker III -40	20	8617	232	47.15	3,772.01	98,072.26	49.51	3,960.78	102,980.28	51.98	4,158.37	108,117.62	54.57	4,365.78	113,510.28	57.31	4,585.00	119,210.00
Fleet Maintenance Worker I	20	7207	213	37.27	2,795.30	72,677.80	39.13	2,935.03	76,310.78	41.09	3,081.81	80,127.06	43.14	3,235.84	84,131.84	45.30	3,397.65	88,338.90
Fleet Maintenance Worker II	20	7208	214	41.00	3,074.84	79,945.84	43.05	3,228.54	83,942.04	45.20	3,390.00	88,140.00	47.46	3,559.51	92,547.26	49.83	3,737.41	97,172.66
Fleet Maintenance Worker III	20	7209	215	47.15	3,536.02	91,936.52	49.50	3,712.81	96,533.06	51.98	3,898.42	101,358.92	54.58	4,093.33	106,426.58	57.31	4,298.07	111,749.82
GIS Technician	50	2212	552	51.90	4,151.81	107,947.06	54.49	4,359.39	113,344.14	57.22	4,577.38	119,011.88	60.08	4,806.23	124,961.98	63.08	5,046.61	131,211.86
Hazardous Materials Inspector	10	3502	105	64.88	5,190.53	134,953.78	68.05	5,443.63	141,534.38	71.37	5,709.37	148,443.62	74.85	5,988.39	155,698.14	78.52	6,281.37	163,315.62
Housing Authority Adminr	60	1120	673	62.12	4,969.45	129,205.70	-	-	-	-	-	-	-	-	-	86.96	6,957.19	180,886.94
Human Resources Analyst I	80	2124	843	41.20	3,295.90	85,693.40	-	-	-	-	-	-	-	-	-	54.24	4,338.84	112,809.84
Human Resources Analyst II	80	2123	842	45.50	3,639.93	94,638.18	-	-	-	-	-	-	-	-	-	59.89	4,790.99	124,565.74
Human Resources Assistant	80	2108	846	29.35	2,347.82	61,043.32	30.81	2,465.13	64,093.38	32.35	2,588.38	67,297.88	33.97	2,717.81	70,663.06	35.67	2,853.69	74,195.94
Human Resources Director	60	1105	613	83.84	6,707.02	174,382.52	-	-	-	-	-	-	-	-	-	117.37	9,389.86	244,136.36
Human Resources Technician	80	2107	816	35.60	2,847.61	74,037.86	37.38	2,990.61	77,755.86	39.24	3,139.47	81,626.22	41.21	3,297.06	85,723.56	43.27	3,461.48	89,998.48
I T Director	60	2113	624	82.73	6,618.79	172,088.54	-	-	-	-	-	-	-	-	-	115.83	9,266.29	240,923.54
I T Manager	80	2116	819	62.02	4,961.81	129,007.06	-	-	-	-	-	-	-	-	-	81.64	6,531.56	169,820.56
I T Technician	50	3101	542	41.29	3,303.34	85,886.84	43.36	3,468.49	90,180.74	45.52	3,641.87	94,688.62	47.80	3,823.97	99,423.22	50.19	4,015.19	104,394.94
Information Services Analyst	80	2118	831	52.17	4,173.96	108,522.96	-	-	-	-	-	-	-	-	-	68.68	5,494.16	142,848.16
Junior Engineer	50	2203	519	47.18	3,774.35	98,133.10	49.54	3,963.08	103,040.08	52.02	4,161.23	108,191.98	54.62	4,369.29	113,601.54	57.35	4,587.76	119,281.76
Junior Planner	50	2804	520	42.72	3,417.27	88,849.02	44.85	3,588.15	93,291.90	47.09	3,767.54	97,956.04	49.45	3,955.97	102,855.22	51.92	4,153.72	107,996.72
Legal Assistant	60	1124	689	39.30	3,144.37	81,753.62	41.27	3,301.59	85,841.34	43.33	3,466.69	90,133.94	45.50	3,640.00	94,640.00	47.77	3,821.99	99,371.74
Lifeguard	70	5610	710	16.40	1,312.00	34,112.00	-	-	-	-	-	-	-	-	-	21.56	1,724.80	44,844.80

CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Effective 07/03/2022

Item # C12.

				Step A			Step B			Step C			Step D			Step E		
Classification	Union Code	Occ Code	Pay Grade	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual
Maint Worker III - 40	20	8619	234	40.15	3,211.67	83,503.42	42.16	3,372.50	87,685.00	44.26	3,541.02	92,066.52	46.48	3,718.22	96,673.72	48.80	3,904.09	101,506.34
Maintenance Assistant	20	8625	238	24.48	1,958.40	50,918.40	25.64	2,051.20	53,331.20	26.84	2,147.20	55,827.20	28.11	2,248.80	58,468.80	29.43	2,354.40	61,214.40
Maintenance Custodian I	20	8101	203	28.60	2,144.74	55,763.24	30.03	2,251.98	58,551.48	31.53	2,364.60	61,479.60	33.10	2,482.83	64,553.58	34.76	2,606.97	67,781.22
Maintenance Custodian I - 40	20	8107	222	28.60	2,287.74	59,481.24	30.03	2,402.10	62,454.60	31.53	2,522.22	65,577.72	33.10	2,648.35	68,857.10	34.76	2,780.74	72,299.24
Maintenance Custodian II	20	8102	204	31.46	2,359.27	61,341.02	33.03	2,477.20	64,407.20	34.68	2,601.08	67,628.08	36.41	2,731.06	71,007.56	38.24	2,867.65	74,558.90
Maintenance Custodian II - 40	20	8108	223	31.46	2,516.55	65,430.30	33.03	2,642.32	68,700.32	34.68	2,774.47	72,136.22	36.41	2,913.14	75,741.64	38.24	3,058.86	79,530.36
Maintenance Custodian III	20	8103	205	36.17	2,713.10	70,540.60	37.98	2,848.74	74,067.24	39.88	2,991.18	77,770.68	41.88	3,140.75	81,659.50	43.97	3,297.83	85,743.58
Maintenance Custodian III - 40	20	8618	233	36.18	2,894.16	75,248.16	37.98	3,038.65	79,004.90	39.89	3,191.03	82,966.78	41.88	3,350.28	87,107.28	43.97	3,517.40	91,452.40
Maintenance Worker I	20	8202	206	31.46	2,359.27	61,341.02	33.03	2,477.20	64,407.20	34.68	2,601.08	67,628.08	36.41	2,731.12	71,009.12	38.24	2,867.65	74,558.90
Maintenance Worker I-40	20	8203	207	31.74	2,539.49	66,026.74	33.32	2,665.64	69,306.64	34.99	2,799.51	72,787.26	36.74	2,939.14	76,417.64	38.58	3,086.49	80,248.74
Maintenance Worker II	20	8204	208	34.60	2,595.16	67,474.16	36.33	2,724.90	70,847.40	38.15	2,861.12	74,389.12	40.06	3,004.20	78,109.20	42.06	3,154.42	82,014.92
Maintenance Worker II-40	20	8205	209	34.91	2,792.76	72,611.76	36.66	2,932.40	76,242.40	38.50	3,079.75	80,073.50	40.41	3,232.86	84,054.36	42.43	3,394.64	88,260.64
Maintenance Worker III	20	8206	210	39.79	2,984.39	77,594.14	41.78	3,133.62	81,474.12	43.87	3,290.31	85,548.06	46.06	3,454.83	89,825.58	48.37	3,627.59	94,317.34
Maintenance Worker/Seasonal	70	8207	760	19.88	1,590.40	41,350.40	-	-	-	-	-	-	-	-	-	24.85	1,988.00	51,688.00
Management Analyst	80	2128	854	54.62	4,369.68	113,611.68	-	-	-	-	-	-	-	-	-	76.49	6,118.89	159,091.14
Marketing Coordinator	50	5614	548	40.10	3,207.70	83,400.20	42.10	3,368.08	87,570.08	44.21	3,536.47	91,948.22	46.42	3,713.30	96,545.80	48.74	3,898.97	101,373.22
Mayor	60	1118	696	26.09	521.88	13,568.88	-	-	-	-	-	-	-	-	-	26.09	521.88	13,568.88
Office Assistant I	50	6108	516	27.13	2,170.11	56,422.86	28.48	2,278.60	59,243.60	29.91	2,392.55	62,206.30	31.40	2,512.13	65,315.38	32.97	2,637.75	68,581.50
Office Assistant II	50	6109	517	29.84	2,387.01	62,062.26	31.33	2,506.32	65,164.32	32.90	2,631.71	68,424.46	34.54	2,763.29	71,845.54	36.27	2,901.39	75,436.14
Office Specialist	50	6110	518	34.31	2,745.05	71,371.30	36.03	2,882.34	74,940.84	37.83	3,026.49	78,688.74	39.72	3,177.85	82,624.10	41.71	3,336.66	86,753.16
Patrol Officer	40	4401	404	50.99	4,079.50	106,067.00	53.54	4,283.47	111,370.22	56.22	4,497.62	116,938.12	59.03	4,722.51	122,785.26	61.98	4,958.60	128,923.60
Patrol Officer Trainee	40	4402	458	49.90	3,991.89	103,789.14	52.39	4,191.41	108,976.66	55.01	4,401.03	114,426.78	57.76	4,621.05	120,147.30	60.65	4,852.06	126,153.56
Payroll Specialist	50	5102	546	36.65	2,931.78	76,226.28	38.48	3,078.37	80,037.62	40.40	3,232.28	84,039.28	42.42	3,393.91	88,241.66	44.54	3,563.55	92,652.30
Plan Check Engineer	50	3807	521	61.08	4,886.04	127,037.04	64.12	5,129.83	133,375.58	67.33	5,386.67	140,053.42	70.69	5,655.57	147,044.82	74.28	5,942.06	154,493.56
Plan Checker	50	3803	522	52.08	4,166.40	108,326.40	54.68	4,374.67	113,741.42	57.42	4,593.78	119,438.28	60.28	4,822.79	125,392.54	63.31	5,064.61	131,679.86
Plan Review Manager	60	1210	678	65.18	5,214.64	135,580.64	-	-	-	-	-	-	-	-	-	84.78	6,782.12	176,335.12
Planning Commissioners	70	1108	698	1.00	20.00	520.00	-	-	-	-	-	-	-	-	-	1.00	20.00	520.00
Planning Director	60	1803	607	83.95	6,715.81	174,611.06	-	-	-	-	-	-	-	-	-	117.53	9,402.14	244,455.64
Planning Manager	60	2803	602	63.98	5,118.53	133,081.78	-	-	-	-	-	-	-	-	-	89.57	7,165.93	186,314.18
Planning Technician	50	2813	554	38.00	3,040.05	79,041.30	39.90	3,192.38	83,001.88	41.91	3,352.54	87,166.04	43.99	3,519.54	91,508.04	46.19	3,695.33	96,078.58
Police Assistant	40	6401	450	48.46	3,876.41	100,786.66	50.88	4,070.19	105,824.94	53.42	4,273.69	111,115.94	56.09	4,487.40	116,672.40	58.90	4,711.78	122,506.28
Police Captain	60	1401	651	97.05	7,763.75	201,857.50	-	-	-	-	-	-	-	-	-	135.87	10,869.20	282,599.20
Police Clerk I	40	6402	451	34.73	2,778.57	72,242.82	36.47	2,917.51	75,855.26	38.29	3,063.37	79,647.62	40.21	3,216.55	83,630.30	42.22	3,377.31	87,810.06
Police Clerk II	40	6403	452	38.20	3,056.36	79,465.36	40.12	3,209.26	83,440.76	42.12	3,369.71	87,612.46	44.23	3,538.22	91,993.72	46.44	3,715.05	96,591.30
Police Clerk Supervisor	40	6404	454	44.13	3,530.17	91,784.42	46.33	3,706.71	96,374.46	48.65	3,892.00	101,192.00	51.08	4,086.62	106,252.12	53.64	4,290.94	111,564.44
Police Evidence Technician	40	8607	459	40.52	3,241.35	84,275.10	42.54	3,403.39	88,488.14	44.67	3,573.58	92,913.08	46.90	3,752.28	97,559.28	49.25	3,939.88	102,436.88
Police Lieutenant	40	2402	400	78.22	6,257.36	162,691.36	82.13	6,570.23	170,825.98	86.23	6,898.77	179,368.02	90.55	7,243.73	188,336.98	95.07	7,605.89	197,753.14
Police Officer	40	4403	403	55.76	4,460.97	115,985.22	58.55	4,684.09	121,786.34	61.48	4,918.27	127,875.02	64.55	5,164.14	134,267.64	67.78	5,422.41	140,982.66
Police Officer Trainee	40	4404	457	54.56	4,365.16	113,494.16	57.29	4,583.47	119,170.22	60.16	4,812.68	125,129.68	63.17	5,053.28	131,385.28	66.32	5,305.94	137,954.44
Police Sergeant	40	4405	401	67.36	5,388.98	140,113.48	70.73	5,658.44	147,119.44	74.27	5,941.35	154,475.10	77.98	6,238.50	162,201.00	81.88	6,550.42	170,310.92
Police Support Services Mgr	60	1404	657	62.05	4,964.09	129,066.34	-	-	-	-	-	-	-	-	-	86.88	6,950.04	180,701.04
Pool Manager	70	5608	708	18.74	1,499.20	38,979.20	-	-	-	-	-	-	-	-	-	26.23	2,098.40	54,558.40
Principal Civil Engineer	80	2204	822	65.18	5,214.64	135,580.64	-	-	-	-	-	-	-	-	-	84.78	6,782.12	176,335.12
Principal Planner	80	2811	823	67.21	5,376.42	139,786.92	-	-	-	-	-	-	-	-	-	81.40	6,511.68	169,303.68
Program Coordinator	50	5606	523	37.39	2,991.45	77,777.70	-	-	-	-	-	-	-	-	-	49.22	3,937.64	102,378.64
Public Information Officer	60	1122	674	61.58	4,926.60	128,091.60	-	-	-	-	-	-	-	-	-	86.22	6,897.25	179,328.50
Public Services Assistant I	50	6601	524	31.19	2,495.54	64,884.04	32.75	2,620.34	68,128.84	34.39	2,751.38	71,535.88	36.11	2,888.94	75,112.44	37.92	3,033.37	78,867.62
Public Services Assistant II	50	6602	525	34.31	2,745.08	71,372.08	36.03	2,882.37	74,941.62	37.83	3,026.48	78,688.48	39.72	3,177.86	82,624.36	41.71	3,336.66	86,753.16
Public Works Director	60	1204	635	86.32	6,905.59	179,545.34	-	-	-	-	-	-	-	-	-	120.85	9,667.85	251,364.10
Public Works Inspector	50	3202	526	50.37	4,029.41	104,764.66	52.89	4,230.92	110,003.92	55.53	4,442.42	115,502.92	58.31	4,664.57	121,278.82	61.22	4,897.77	127,342.02
Public Works Manager	60	1117	648	57.45	4,596.17	119,500.42	-	-	-	-	-	-	-	-	-	80.43	6,434.63	167,300.38
Purchasing Agent	80	1106	826	53.81	4,304.96	111,928.96	-	-	-	-	-	-	-	-	-	69.40	5,552.20	144,357.20
Recreation Administrative Asst	70	5619	712	16.40	1,312.00	34,112.00	-	-	-	-	-	-	-	-	-	21.56	1,724.80	44,844.80
Recreation Attendant	70	5618	711	16.40	1,312.00	34,112.00	-	-	-	-	-	-	-	-	-	21.56	1,724.80	44,844.80
Recreation Instructors	70	5607	707	18.82	1,505.60	39,145.60	-	-	-	-	-	-	-	-	-	37.64	3,011.20	78,291.20
Recreation Leader	70	5617	706	16.40	1,312.00	34,112.00	-	-	-	-	-	-	-	-	-	21.56	1,724.80	44,844.80
Recreation Services Supervisor	80	2601	827	51.40	4,112.34	106,920.84	-	-	-	-	-	-	-	-	-	67.65	5,412.39	140,722.14
Recreation Svcs Assistant I	50	8601	527	17.63	1,410.59	36,675.34	18.51	1,481.10	38,508.60	19.44	1,555.20	40,435.20	20.41	1,632.92	42,455.92	21.43	1,714.61	44,579.86
Recreation Svcs Assistant II	50	8602	528	20.94	1,674.82	43,545.32	21.98	1,758.74	45,727.24	23.08	1,846.63	48,012.38	24.24	1,939.01	50,414.26	25.45	2,035.91	52,933.66

CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Effective 07/03/2022

Item # C12.

Classification	Union Code	Occ Code	Pay Grade	Step A			Step B			Step C			Step D			Step E		
				Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual
Recreation Svcs Assistant III	50	8603	529	24.06	1,925.17	50,054.42	25.27	2,021.38	52,555.88	26.53	2,122.46	55,183.96	27.86	2,228.57	57,942.82	29.25	2,340.04	60,841.04
Recreation Svcs Assistant IV	50	8604	530	28.23	2,258.74	58,727.24	29.65	2,371.66	61,663.16	31.13	2,490.24	64,746.24	32.68	2,614.77	67,984.02	34.32	2,745.49	71,382.74
Retired Annuitant - Extra Help	70	5107	747	50.00	4,000.00	104,000.00	-	-	-	-	-	-	-	-	-	125.00	10,000.00	260,000.00
Retired Annuitant - Interim	70	5108	748	50.00	4,000.00	104,000.00	-	-	-	-	-	-	-	-	-	125.00	10,000.00	260,000.00
Risk Analyst	80	2130	857	42.48	3,398.78	88,368.28	-	-	-	-	-	-	-	-	-	55.92	4,473.83	116,319.58
Senior Accountant	80	2110	829	47.82	3,825.84	99,471.84	-	-	-	-	-	-	-	-	-	62.95	5,035.65	130,926.90
Senior Accounting Technician	50	6106	539	37.74	3,019.59	78,509.34	39.63	3,170.60	82,435.60	41.61	3,329.12	86,557.12	43.70	3,495.61	90,885.86	45.88	3,670.35	95,429.10
Senior Administrative Analyst	80	2112	834	52.82	4,225.77	109,870.02	-	-	-	-	-	-	-	-	-	69.53	5,562.61	144,627.86
Senior Building Inspector	50	3804	531	58.17	4,653.94	121,002.44	61.08	4,886.70	127,054.20	64.14	5,131.00	133,406.00	67.34	5,387.52	140,075.52	70.71	5,656.91	147,079.66
Senior Buyer	80	2129	856	50.76	4,060.88	105,582.88	-	-	-	-	-	-	-	-	-	61.80	4,943.98	128,543.48
Senior Executive Assistant	80	6123	855	45.50	3,639.93	94,638.18	-	-	-	-	-	-	-	-	-	59.89	4,790.99	124,565.74
Senior HR Analyst	80	2122	841	49.32	3,945.52	102,583.52	-	-	-	-	-	-	-	-	-	64.92	5,193.48	135,030.48
Senior Plan Check Engineer	50	3806	534	67.18	5,374.63	139,740.38	70.54	5,643.52	146,731.52	74.07	5,925.44	154,061.44	77.77	6,221.41	161,756.66	81.66	6,532.41	169,842.66
Senior Planner	80	2805	830	61.61	4,928.77	128,148.02	-	-	-	-	-	-	-	-	-	74.89	5,991.12	155,769.12
Senior Public Works Inspector	50	3203	535	58.17	4,653.97	121,003.22	61.08	4,886.70	127,054.20	64.14	5,131.01	133,406.26	67.34	5,387.52	140,075.52	70.71	5,656.91	147,079.66
Senior Public Works Lead	20	8609	225	53.22	4,257.61	110,697.86	55.88	4,470.49	116,232.74	58.68	4,694.02	122,044.52	61.61	4,928.70	128,146.20	64.69	5,175.28	134,557.28
Special Project Associate	70	5105	750	20.00	1,600.00	41,600.00	-	-	-	-	-	-	-	-	-	50.00	4,000.00	104,000.00
Special Project Associate	70	8605	750	20.00	1,600.00	41,600.00	-	-	-	-	-	-	-	-	-	50.00	4,000.00	104,000.00
Sr Code Enforcement Officer	50	5806	545	51.68	4,134.64	107,500.64	54.26	4,340.56	112,854.56	56.98	4,558.18	118,512.68	59.83	4,786.42	124,446.92	62.82	5,025.25	130,656.50
Sr. Public Services Assistant	50	5615	549	38.27	3,061.96	79,610.96	40.19	3,215.06	83,591.56	42.20	3,375.81	87,771.06	44.31	3,544.60	92,159.60	46.52	3,721.83	96,767.58
Sr. Special Projects Associate	70	5106	749	50.00	4,000.00	104,000.00	-	-	-	-	-	-	-	-	-	125.00	10,000.00	260,000.00
Staff Assistant	70	5104	745	16.40	1,312.00	34,112.00	-	-	-	-	-	-	-	-	-	24.64	1,971.20	51,251.20
Student Intern	70	5103	740	16.40	1,312.00	34,112.00	-	-	-	-	-	-	-	-	-	24.64	1,971.20	51,251.20
Transporation & Traffic Mgr	60	1202	675	61.58	4,926.60	128,091.60	-	-	-	-	-	-	-	-	-	86.22	6,897.25	179,328.50
Water Meter Technician I	20	8104	216	31.46	2,359.17	61,338.42	33.03	2,477.20	64,407.20	34.68	2,601.07	67,627.82	36.41	2,731.06	71,007.56	38.24	2,867.64	74,558.64
Water Meter Technician I -40	20	8620	235	31.46	2,516.64	65,432.64	33.03	2,642.48	68,704.48	34.68	2,774.21	72,129.46	36.41	2,912.82	75,733.32	38.24	3,059.31	79,542.06
Water Meter Technician II	20	8105	217	34.60	2,595.16	67,474.16	36.33	2,724.88	70,846.88	38.15	2,861.11	74,388.86	40.06	3,004.18	78,108.68	42.06	3,154.42	82,014.92
Water Meter Technician II -40	20	8621	236	34.60	2,768.30	71,975.80	36.34	2,906.93	75,580.18	38.14	3,051.44	79,337.44	40.06	3,204.80	83,324.80	42.06	3,365.04	87,491.04
Water Systems Operator	20	7211	219	48.09	3,606.73	93,774.98	50.49	3,786.68	98,453.68	53.02	3,976.38	103,385.88	55.67	4,175.21	108,555.46	58.45	4,383.99	113,983.74
Water Systems Operator - 40	20	8622	237	48.09	3,847.26	100,028.76	50.49	4,039.25	105,020.50	53.01	4,241.13	110,269.38	55.67	4,453.72	115,796.72	58.45	4,676.20	121,581.20



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Proposed Revisions to the City Council Policy for Donations for City Parks and Recreation and Community Services Programs (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	10/4/2022
	<u>Recommendation:</u> Approve proposed revisions to the City Council Policy for Donations for City Parks and Recreation and Community Services Programs.

Background:

On March 19, 2013 the City Council adopted policy and procedures for donations to City of Milpitas Parks and for Recreation programs. The policy outlines procedures for financial donations including but not limited memorials, specific use and anonymous; non-financial donations including but limited to materials, property and fixtures; and Recognitions including but not limited to donations in memorium of an individual.

As part of the adoption of the FY 2021-22 Operating Budget, the City Council approved the Budget Guidelines which state in part that the City Manager is authorized to accept grants or donations up to and including \$100,000, increase department revenues and appropriations accordingly, and execute related agreements as long as no matching funds are required, and departments do not require additional funding for ongoing maintenance costs or future replacement costs.

Analysis:

With the recommended changes to the draft Donations to City Parks, and/or Recreation and Community Services Programs Policy (Policy), staff is aligning the Policy to the approved budget guideline regarding the acceptance of grant and donations, updating the Policy reflective of recent changes in the law, and presenting it in the new Council Policy format. Below are highlights of the Policy from the Purpose, Policy, and Procedure sections.

The Purpose of the Policy is to establish the guidelines, criteria, and processes for donations to City parks and/or Recreation and Community Services Department programs. The updated Policy defines the authority of the City of Milpitas and City Council related to this policy in "Section 2. Policy" as:

- The City shall have the sole authority and the City Council shall have the final authority to approve donations.
- The City reserves the right to recognize donors, or for memorial gifts the named individual, in any other manner the City so chooses, and no outside donor shall have the right to apply, control, or dictate the City's manner of recognition.
- In the event the City chooses to recognize a donor, or for memorial gifts, the named individual, the manner of recognition shall be construed as the City's own speech under the government speech doctrine and no open forum shall be created by the City's sole decision to recognize a donor or named individual at a certain location or in a certain manner.
- Final review and action to accept or decline a donation on behalf of the City of Milpitas is determined by the Milpitas City Council. The final decision on recognition shall also be determined by the City Council.

The policy continues to have the Parks, Recreation and Cultural Resources Commission make recommendation to City Council on appropriate donations in value of over \$100,000. Donations could be monetary or non-monetary (i.e. materials, property, fixtures), including memorial donations such as contribution of funds in memory of a passed loved one, or memorial benches.

Additional language has been added to the policy clarifying that City staff or City Council solicited sponsorships or donations will align with the approved budget guidelines regarding the acceptance of grant and donations.

For receiving monetary donations to City Parks and/or Recreation and Community Services programs, the draft policy requires, as stated in “Section 3. Procedure” that:

- All inquiries about monetary donations shall be directed to the Recreation and Community Services Director.
- If deemed a viable donation, potential donors shall be provided a copy of the Parks, Recreation and Cultural Resources Donation Form.
- Upon receipt of this completed form by the Director, the proposed donation shall be placed on the next appropriate PRCRC agenda.
- For monetary donations up to and including \$100,000 that do not require any matching funds, additional funding for ongoing maintenance costs or future replacement costs, staff will provide an informational item to the PRCRC for information purposes only. The donation will be accepted administratively. The Director of Finance will report quarterly the acceptance of any grants and donations as part of the quarterly financial status report.
- For monetary donation over \$100,000, the PRCRC shall review the proposed donations and provide a recommendation for either accepting or declining the donation to the Milpitas City Council.

For receiving non-monetary donations to City Parks and/or Recreation and Community Services programs, “Section 3. Procedure” in the draft policy requires that like monetary donations, all inquiries shall be directed to the Recreation and Community Services Director. The Director will coordinate the review of any non-financial donations with other City Departments affected by the donation, including but not limited to Finance and Public Works. Following that review:

- If deemed a viable donation, potential donors shall be provided a copy of the Parks, Recreation and Cultural Resources Donation Form.
- Upon receipt of this completed form by the Director, the proposed donation shall be accepted by the City Manager or their designee if there are no ongoing maintenance or future replacement costs. Otherwise, the donation shall come to the PRCRC for approval with an estimated value of up to and including \$25,000 and to the PRCRC for recommendation for City Council approval with an estimated value greater than \$25,000.
- The PRCRC shall receive a quarterly report on received non-financial donations received for up to and including \$25,000 at a regularly scheduled meeting.

On September 12, 2022, the Parks, Recreation and Cultural Resources Commission reviewed the proposed revisions to the City Council Policy for Donations for City Parks and Recreation and Community Services Programs, and unanimously recommended for City Council approval.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve the updated Approve updates to the Donations to City Parks, and/or Recreation and Community Services Programs Policy.

Pros: If City Council does not approve the updated Donations to City Parks, and/or Recreation and Community Services Programs Policy, no additional staff time is needed to work on this project.

Cons: If City Council does not approve the updated Donations to City Parks, and/or Recreation and Community Services Programs Policy, the City will be operating under an outdated policy resulting in both City staff and City Council operating inefficiencies.

Reason for Not Recommending: If City Council does not approve the updated Donations to City Parks, and/or Recreation and Community Services Programs Policy. the City will be operating under an outdated policy resulting in both City staff and City Council operating inefficiencies.

FISCAL IMPACT:

None.

California Environmental Quality Act (CEQA):

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a “project” for the purpose of CEQA.

RECOMMENDATION:

Approve Proposed Revisions to the City Council Policy for Donations for City Parks and Recreation and Community Services Programs

Attachment(s):

Draft Donations to City Parks, and/or Recreation and Community Services Programs Policy



CITY OF MILPITAS

Item # 13.

Revision	Date
Original	03/19/2013
Revised	10/4/2022

CITY COUNCIL POLICY

Policy No: Click or tap here to enter text.	DONATIONS FOR CITY PARKS AND RECREATION AND COMMUNITY SERVICES PROGRAMS	Effective Date: 10/4/2022
Revision No: 1	Policy Administrator: Recreation and Community Services	Next Review Due: As needed
Related Policies and Procedures: Incorporates and replaces Original	Approved by: Click or tap here to enter text. Council meeting date, agenda item #, and vote	Date Approved: 10/4/2022

1. PURPOSE

- 1.1. This Policy establishes the guidelines, criteria, and processes for donations for City parks and Recreation and Community Services Department programs.
- 1.2. This Policy is consistent with the Council approved Budget Guidelines which state in part that the City Manager is authorized to accept grants or donations up to and including \$100,000, increase department revenues and appropriations accordingly, and execute related agreements as long as no matching funds are required, and departments do not require additional funding for ongoing maintenance costs or future replacement costs

2. POLICY

- 2.1. The City shall have the sole authority and the City Council shall have the final authority to approve donations except for monetary donations up to and including \$100,000 that do not require any matching funds, additional funding for ongoing maintenance costs or future replacement costs.
- 2.2. The City reserves the right to recognize donors, or, for memorial gifts, the named individual, in any other manner the City so chooses. No outside donor shall have the right to apply, control, or dictate the City's manner of recognition.
- 2.3. In the event the City chooses to recognize a donor, or for memorial gifts, the named individual, the manner of recognition shall be construed as the City's own speech under the government speech doctrine and no open forum shall be created by the City's exercise of its sole decision to recognize a donor or named individual at a certain location or in a certain manner.
- 2.4. Final review and action to accept or decline a donation, and recognition of the donor for accepted donations on behalf of the City of Milpitas is determined by the Milpitas City Council except for monetary donations up to and including \$100,000 that do not require any matching funds, additional funding for ongoing maintenance costs or future replacement costs. For these monetary donations, the final review and action rests with the City Manager.
- 2.5. The Parks, Recreation and Cultural Resources Commission (PRCRC) shall evaluate appropriate donations to City Parks or Recreation and Community Services programs and shall make recommendations to the City Council.
- 2.6. Financial Donations



Revision	Date
Original	03/19/2013

DONATION FOR CITY PARKS AND RECREATION AND COMMUNITY SERVICES PROGRAMS/ POLICY

- 2.6.1. Donors may earmark monies for the purchase of specific materials, supplies, equipment, furnishings, and other items to the extent practical.
- 2.6.2. City staff will apply the funds as requested by the donor. Should additional or alternate uses for the funds be identified, staff will consult with the donor and receive written permission to apply funds differently.
- 2.6.3. Memorial Donations
 - 2.6.3.1 Memorial Donations allow for individuals to contribute funds “in memory of” a family member who has passed away or retired and moved out of the area.
 - 2.6.3.2 Memorial donations may not be contributed in memory of pets, or livestock.
 - 2.6.3.3 Individuals may name the City of Milpitas or Recreation and Community Services as a beneficiary in their wills, trusts, or other estate planning document. The will might stipulate that the funds (or interest from part of an estate) be used to purchase particular items or materials in certain service areas or support certain programs.
 - 2.6.3.4 Donation in memory of an individual must be appropriate and relevant to the Milpitas community, (i.e., past resident, business-person or other person having contributed to the good of the Milpitas community).
- 2.6.4. Anonymous Donations
 - 2.6.4.1 Donations with the request to remain anonymous will not be acknowledged in any donor listings.
- 2.6.5. Non-financial Donations
 - 2.6.5.1 In the event a donor desires to give materials, personal property, real property, fixtures and other things, non-monetary in nature, to the City, the proposed gift shall be presented to the Director of Recreation and Community Services in writing.
 - 2.6.5.2 All such non-monetary donations shall be subject to the City Manager or designee’s determination of probable value and viability for acceptance and placement.
 - 2.6.5.3 If determined by staff to be a viable donation, the Parks, Recreation and Cultural Resources Commission shall make a recommendation to the City Council for a final decision, except for monetary donations up to and including \$100,000, in which the final review and action rests with the City Manager.

3. PROCEDURE

- 3.1. Accepting Monetary Donation Requests
 - 3.1.1. All inquiries about monetary donations shall be directed to the Recreation and Community Services Director.
 - 3.1.2. If deemed a viable donation, potential donors shall be provided a copy of the Parks, Recreation and Cultural Resources Donation Form.
 - 3.1.3. Upon receipt of this completed form by the Director, the proposed donation shall be placed on the next appropriate PRCRC agenda.
 - 3.1.4. For monetary donations up to and including \$100,000 that do not require any matching funds, additional funding for ongoing maintenance costs or future replacement costs, staff will provide an informational item to the PRCRC for



Revision	Date
Original	03/19/2013

**DONATION FOR CITY PARKS AND RECREATION AND COMMUNITY SERVICES
PROGRAMS/ POLICY #**

information purposes only. The donation will be accepted administratively. The Director of Finance will report quarterly the acceptance of any grants and donations as part of the quarterly financial status report.

- 3.1.5. For any monetary donation, that requires any matching funds, additional funding for ongoing maintenance costs, future replacement costs, or any monetary donation over \$100,000, the PRCRC shall review the proposed donations and provide a recommendation for either accepting or declining the donation to the Milpitas City Council.

3.2. Accepting Non-financial Donation Requests

- 3.2.1. All inquiries about non-financial donations shall be directed to the Recreation and Community Services Director.
- 3.2.2. Recreation and Community Services Director will coordinate the review of any non-financial donations with other City Departments affected by the donation, including but not limited to the Office of the City Attorney, Finance and Public Works.
- 3.2.3. If deemed a viable donation, potential donors shall be provided a copy of the Parks, Recreation and Cultural Resources Donation Form.
- 3.2.4. Upon receipt of this completed form by the Director, the proposed donation shall be accepted by the City Manager or their designee if there are no ongoing maintenance or future replacement costs. Otherwise, the donation shall come to the PRCRC for approval with an estimated value of up to and including \$25,000 and to the PRCRC for recommendation for City Council approval with an estimated value greater than \$25,000.
- 3.2.5. The PRCRC shall receive a quarterly report on received non-financial donations received for up to and including \$25,000 at a regularly scheduled meeting.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive an Update on the American Rescue Plan Act and Provide Direction to Staff (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Lauren Lai, Director of Finance, 408-586-3111)
Category:	Leadership and Support Services
Meeting Date:	10/4/2022
	<u>Recommendation:</u> Receive an update on the American Rescue Plan Act (ARPA) programs and provide direction to staff.

Background:

In March 2020, due to the rampant spread of the Coronavirus (Pandemic), a state of emergency was declared at the local, state, and federal levels and stay-at-home orders issued, which had an enormous impact on the local, state and national economy as well as the City's finances.

On March 11, 2021, President Biden signed into law the American Rescue Plan Act (ARPA), a \$1.9 trillion stimulus package, to counteract the economic impacts of the pandemic. The City's ARPA allocation of \$16,736,815 is available in two tranches, which was received in June 2021 and June 2022. Funds need to be either expended or encumbered by December 31, 2024, with all funds to be expended by December 31, 2026.

On May 11 ([link to staff report](#)), staff presented preliminary information on ARPA's Coronavirus State and Local Fiscal Recovery Funding. Staff also provided information on other funding through ARPA that could benefit the Milpitas community since the Coronavirus Local Fiscal Recovery Funding (CLFRF) is only a portion of the total ARPA funding. Staff received Council input on ARPA Plan spending priorities in May and June ([June 8 Council Meeting agenda report](#)). A majority of the spending priorities were related to financial assistance and social services to those impacted by the pandemic, economic vitality, infrastructure, public safety, and technology.

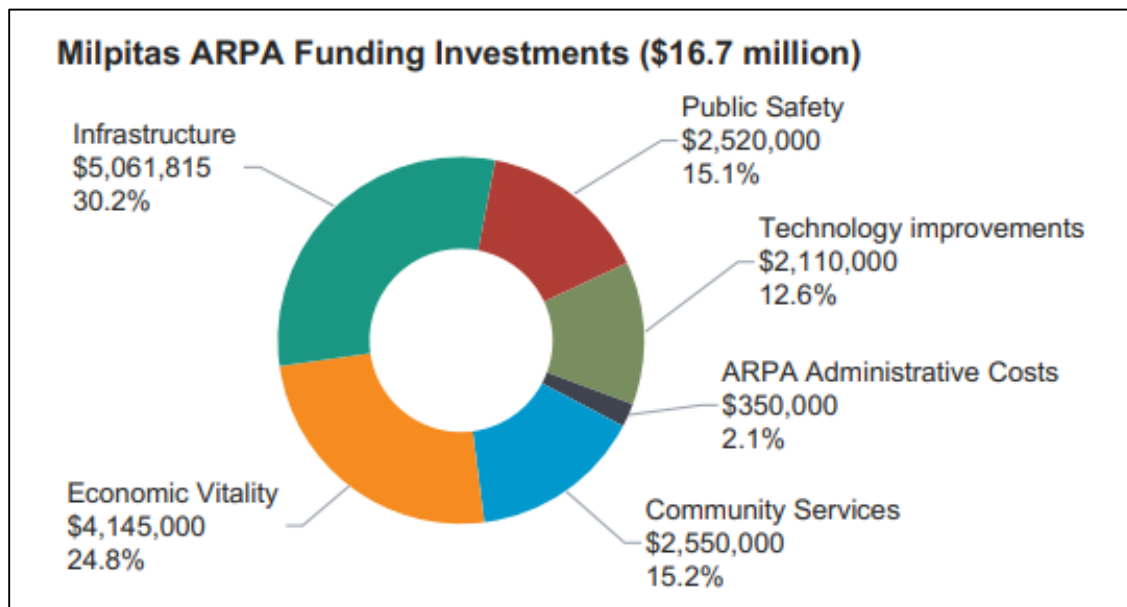
On June 21 ([link to the agenda report](#)), Council approved the ARPA Investment Framework including the Fiscal Guidelines and Five Investment Areas. Fiscal Guidelines include the following:

1. Identify and promote **other ARPA or State funding sources** to the extent possible before dedicating local ARPA funds.
2. Use one-time ARPA funds for **one-time expenditures** such as investment in infrastructure or technology with minimum ongoing operating costs.
3. **Avoid ongoing General Fund commitments** with additional programs and positions.
4. **Avoid creating a structural budget deficit** if restoring any reduced services.
5. Leverage **regional agencies, non-profit partners, and existing programs** to maximize efficiency in delivering programs and services.

On August 9 ([link to the agenda report](#)), Council approved funding for 25 programs in the ARPA Investment Plan and delegated authority to the City Manager to proceed with appropriation actions and contract approvals, up to the approved amount for each program approved by Council, once compliance with ARPA procurement, contracting, and reporting requirements are confirmed. This would allow the funding to go to residents and businesses significantly impacted by the pandemic, in an efficient and expeditious manner. Moreover, Council allocated funding into Five Investment areas of **Community Services, Economic Vitality, Infrastructure, Public Safety, and Technology**.

On January 11, 2022 ([link to the agenda report](#)), Council approved program funding re-allocations to enhance service delivery and/or streamline implementation, especially procurement.

On March 15, 2022 ([link to the agenda report](#)), Council provided feedback and direction as a part of the Fiscal Year 2022-23 budget development, which allocated funding into five Investment areas of **Community Services, Economic Vitality, Infrastructure, Public Safety, and Technology** is as follows.



Analysis:

In accordance with the August 9, 2021, Council direction and delegation, the City Manager and staff proceeded with implementing the ARPA programs. This report highlights project activities since the prior ARPA quarterly report on March 15, 2022, with an attachment that summarizes all projects.

Rental and mortgage assistance to low- and moderate-income residents (\$1,100,000)

ARPA funds will expand eligibility for the Milpitas Rent Relief Program and create a Milpitas Mortgage Relief program. Through a competitive solicitation process, the City selected LiveStories for the program administration, with the service contract anticipated to be executed in early October. Limited-term staffing was also hired to assist with ARPA and other citywide affordable housing programs.

Accessory Dwelling Unit (ADU) Program (\$990,000)

ARPA funds will provide payment of permit fees to incentivize the building of new ADUs and encourage the legalization of unpermitted ADUs through the ADU Incentive Program and the Safe ADU Legalization Program. These ADU programs can provide housing options, foster economic growth through increased construction activity and increase property values. To date, ARPA funds of approximately \$127,700 provided subsidies for 43 ADUs, of which thirteen (13) have had permits issued with an average total building fee of \$4,700 and an average floor area of 657 square feet. The other 30 ADUs are still in process and are expected to average slightly higher fees to reflect the building fee increase in the upcoming fiscal year 2023-24 master fee schedule.

Catalytic Converter Public Safety Initiative (\$200,000)

This provides funding for various catalytic converter theft deterrent program(s) to provide economic support to businesses and address this public safety challenge. Staff conducted initial business outreach and developed an online application for businesses, which was launched in late September. Outreach to residents on the overall program will be conducted once enrollment of businesses has been completed, estimated timeline is late October/early November.

Community Services - Social Services (\$500,000)

This Milpitas ARPA allocation funds a variety of social services such as mental health services and services to the LGBTQ plus community and at-risk youth as well as victims of domestic violence and abuse. The City h

partnered with non-profits that are already serving in these areas. Below is a summary of the non-profits, grants and performance to date.

Area of Focus	Agency	Amount	Performance Data & Progress
Domestic Violence	Maitri	\$90,000	Referrals for 14 Milpitas residents, comprehensive services for 5. Domestic Violence Outreach event scheduled for Milpitas Library 10/9.
LGBTQ	Avenidas	\$60,000	Outreach at Milpitas 9/6. Start three recurring meet-ups: Dog Walking, Movie Nights, Senior Lesbian Group.
Youth	Healthier Kids Foundation	\$90,000	Staff person has been hired and will be assuming role shortly.
Mental Health	Leaders of Tomorrow	\$12,000	Outreach to 25 religious and nonprofit leaders. Two public outreach events planned 10/1 and 10/29. Assembling first cohort to start November.
Mental Health	NAMI Santa Clara County	\$18,000	"Ending the Silence" presentation for MUSD staff 9/21, MUSD families 9/29.

Small Business Assistance Grant (\$1,570,000)

ARPA funds of \$1,500,299.71 (net of fiscal agent administrator fees) was used to assist 343 total small businesses. 276 businesses received \$5,000 grants in the first round of funding, while 67 businesses received \$1,700 grants in the next round. All qualifying small business applicants received a grant and, as of 9/23/2022, LiveStories informed the City that 340 businesses deposited their grant checks while only three (3) remain outstanding, which will be monitored. Based on a programmatic survey conducted, staff learned that the top grant expenditures were: 1) rent/mortgage, 2) labor or payroll costs, 3) utilities, and 4) equipment & supplies.

Staff is administratively closing out this project with the fiscal administrator by collecting supporting documentation to prepare for an audit.

Hotel Grant (\$130,000)

ARPA funds of \$130,000 was used to assist thirteen (13) Milpitas hotels with \$10,000 grants each. Funds were disbursed and staff is administratively closing out this project. From the City's hotel survey outreach, Staff learned that the top 4 grant expenditure categories were: 1) labor or payroll costs, 2) utilities, 3) marketing and promotions, and 4) sanitation supplies to keep hotels COVID-19 safe and to aid economy recovery for the hospitality sector.

Economic Development Workforce Development (\$300,000)

On December 14, 2021, the Council approved the first tranche of funding recommendations in the amount of \$150,000 for five (5) non-profit beneficiaries to coordinate workforce/job training programs to aide economic recovery.

Milpitas Youth Force, a program of the Department of Recreation & Community Services, was granted \$40,000 to coordinate a summer youth jobs program. The program successfully concluded and allowed 19 Milpitas youth to participate in a paid, work experience program with the City.

First 5 Santa Clara County was granted \$40,000 to launch an early learning teacher apprenticeship program. The program has two cohorts: 1) the California State Preschool Provider (CSPP) cohort and 2) the Family Child Care Home Provider (FCCH) cohort. Six (6) Milpitas residents have been confirmed for the apprenticeship cohorts. Additionally, there are two (2) Milpitas childcare businesses that are hosting apprentices in the program: 1) Elba's Daycare and 2) Little Giants Montessori Daycare.

Build It Green is a non-profit organization that was awarded \$10,000 to coordinate a Certified Green Building Professionals Certification Program. Three (3) Milpitas residents participated in the certification program and

one of them was a City Planner. Build It Green will host a second certification program in early December 2022 to encourage more Milpitas residents to participate. City staff that may benefit from the training program may also be eligible to participate.

Rising Sun Center for Opportunity is a non-profit organization that was awarded \$10,000 to coordinate the Green House Calls Program and a Climate Careers Externship Program. Despite the non-profit's best efforts to conduct outreach into the community, there were no Milpitas youth participating in the summer work experience program. The extensive community outreach efforts included: 1) Parent Teacher Associations of Milpitas High School and Calaveras Hills High School, 2) in-person outreach to Milpitas Chamber of Commerce representatives and the Milpitas Chamber's job fair event, 3) outreach to the Sunnyhills Neighborhood Association, Boys & Girls Club of Silicon Valley, and the International Children Association Network. Rising Sun is actively in conversations with the Public Works Department for a partnership on a Climate Careers Externship Program.

Evergreen Valley College was awarded \$50,000 to coordinate an Amazon Cloud Practitioner Program to help Milpitas residents access cloud computing technology jobs. Due to major staffing changes at Evergreen Valley College, the College put this program on indefinite hold until additional resources can be allocated by the College.

Homeless Outreach and Assessment (\$100,000)

ARPA funds will continue services with Santa Clara County Office of Supportive Housing and the County's Homeless Engagement and Access Team to provide direct outreach, assessment, and case management services to the City's unhoused residents. As directed by Council, this service will be continued with the County through use of ARPA funding and contract negotiations are in progress.

Park Playground Rehabilitation (\$1,116,000) CIP Project No. 3500 – Public Works

ARPA funds will be used for safety improvements and retrofitting of equipment to eleven (11) of the City's 36 parks. The improvements will focus upon fall zones and improving playground surfaces. Public Works staff have been coordinating with Recreation and Community Services staff on the desired park elements.. Upon completion of the plans, staff will proceed with project bidding. Construction is expected to begin early in 2023 and completed by the end of the fiscal year. Currently, the specifications are nearly finalized, and color selection is expected to be chosen by early October and the release of bid documents is expected by October 14, 2022.

Park Rehabilitation (\$3,270,815) Project No. 3501 - Engineering and RFP

ARPA funds will be used to make repairs and improvements to twelve (12) of the City's 36 parks that were assessed to be in poor and critical condition. The implementation of these repairs and improvements will address health and safety repairs and improve the condition of these parks. The request for proposal for engineering design services was advertised September 14, 2022 and interested design consultants are required to respond to the RFP with their qualifications by October 12, 2022. Following review of submitted qualifications, completion of interviews with prospective consultants, and determination of the most qualified design consultant, Staff will bring a design services agreement for City Council consideration in late 2022 or early 2023. Park rehabilitation design work for the 12 parks is estimated to require up to 12 months to complete. Project bidding and construction will follow completion of the design work. Construction is anticipated to start late 2023 or early 2024.

Implementation of Emergency Management Plan (\$200,000)

On August 5, 2021 Council approved the Emergency Operations Plan (EOP). The EOP, which is the overarching emergency management document, is scheduled to include 20 annexes, which are plans written to respond to specific hazards or address certain populations or processes such Alert & Warning, Access & Functional Needs, Wildland Fire, Donations Management. Consistent with federal procurement guidelines, staff issued a Request for Proposals for the development of the annexes. Three proposals were received and evaluated by Staff. A.G. Witt's proposal was deemed the most advantageous proposal and a contract in the amount of \$187,000 was approved on July 12, 2022 under the City Manager ARPA contract authority as

delegated by the City Council. As of the end of September, three annexes are completed and are currently reviewed. The remaining seventeen (17) are scheduled to be completed by January 2023.

Chamber of Commerce (\$200,000)

In March 2022, the City Council approved ARPA funding in the amount of \$200,000, to be disbursed in two tranches of \$100,000 each, with flexibility for staffing and program delivery, to assist the Milpitas Chamber of Commerce (Chamber). The first tranche (Year 1) was to be disbursed upon execution of a grant agreement by and between the City and the Chamber. The second tranche (Year 2) will be contingent upon a successful first year of ARPA funding to the Chamber. Since the grant award will exceed \$50,000, the Chamber is required to provide information regarding proposed objectives, outcomes, number of people served, etc. which will be outlined in the grant agreement.

On August 9th, 2022, Council directed staff to pause the grant award process until the following deliverables are accomplished: 1) Financial reports for a 12-month period, 2) Work Plan for the Spring 2023 Art & Wine Festival, and 3) an explanation of how ARPA funds will be used overall to ensure the funds are utilized responsibly. Staff and the Chamber have been engaged in reviewing application supporting documents and staff is awaiting additional event and program details. The Chamber has submitted multiple, incomplete ARPA grant applications and staff is requesting additional details on key performance metrics and deliverables.

Financial Management System (\$100,000) – Swap funding with General Fund

ARPA funds of \$100,000 was allocated to provide a financial management system evaluation and operational assessment, as the City plans to replace its 26-year-old legacy system. Staff proposes to swap the funding from ARPA to General Fund for procurement flexibility. Specifically, the General Fund Information Technology function costs may be offset with ARPA in the amount of \$100,000. This would expedite the project and improve administrative efficiency. In accordance with the process approved by the City Council in March 2022, with regards to funding changes, this recommended funding change will be incorporated into the FY 2022-2023 Mid-Year budget report.

Fiscal Impact:

The ARPA allocation to the City is in the amount of \$16,736,815 which Council appropriated into investment areas and specific programs.

California Environmental Quality Act:

This item is not a Project under CEQA in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) as it can be seen with certainty that a general discussion of funding priorities by the City Council will not have a significant effect on the environment. Further, the item is also not a Project pursuant to CEQA Guidelines Section 15378(b)(2) as an administrative activity which is defined in the CEQA Guidelines to include the purchase of supplies and personnel related actions. It is further exempt under CEQA Guideline 15378(b)(4) as it is a government fiscal activity that does not involve a commitment to any specific project which may result in a potentially significant physical impact on the environment. Although the use of funding will be discussed for various potential projects, future environmental analysis will be conducted for the various potential projects prior to the City making any commitment or approval of any project, or it is covered by the CEQA Guideline 15061(b)(3) and/or 15378(b)(2).

Recommendations:

Receive an Update on the American Rescue Plan Act (ARPA), programs and provide direction to staff

Attachments

1. ARPA status update – All Projects

City of Milpitas
ARPA Project Appropriation and Expenditures through September 21, 2022

No.	Program	Approved Appropriation	Year to Date Expenditure	Balance	Current Status
1	Rent and Mortgage Relief	\$ 1,100,000	0	\$1,100,000	Financial administrator selected for program and limited-term staffing hired.
2	Social Services	\$ 500,000	\$ 20,988	\$479,012	Nonprofit grants being disbursed. Programs underway.
3	Financial Assistance to Low and Moderate Income Residents for Utility Payments and Childcare Costs	\$ 575,000	\$ 35,004	\$539,996	Dispersing childcare subsidies, utility assistance monthly. Continuing to enroll participants.
4a	Beautify Milpitas Program	\$ 100,000	\$ 9,682	\$90,318	Initial kits assembled and distributed
4b	Weed Abatement	\$ 90,000	\$ 53,510	\$36,490	Temporary staffing hired for the program.
5	Pilot Curbside Trash Pickup Program	\$ 85,000	0	\$85,000	The City's waste hauler agreed to provide the service.
6	Homeless Outreach and Assessment	\$ 100,000	0	\$100,000	Contact review in progress.
	Community Services Subtotal	\$ 2,550,000	\$ 119,183	\$ 2,430,817	
7	Small Business Assistance Grant Program	\$ 1,570,000	\$ 1,565,100	\$4,900	Grants disbursed and program being closed out.
8	Hotel Assistance Grant Program	\$ 130,000	\$ 130,000	\$0	Completed, close-out in progress.
9	Accessory Dwelling Unit Program	\$ 990,000	\$ 127,709	\$862,291	Grants in progress.
10	Storefront Improvement Grant Program	\$ 365,000	0	\$365,000	This program is on hold as the outdoor dining ordinance is being considered.
11	Community Events	\$ 125,000	\$ 46,051	\$78,949	Completed: Earth Day, Family Campout, Lantern Festival. Upcoming : ArtWalk, Dia de Los Muertos
12	Financial Assistance to the Chamber of Commerce	\$ 200,000	0	\$200,000	Chamber document review in progress.
13	Workforce Development Program	\$ 300,000	\$ 75,312	\$224,688	Grants disbursed to the non-profits.
15	Limited Term Economic Development Specialist Position	\$ 330,000	\$ 136,813	\$193,187	Position filled and ARPA programs being administered.
16	Business Improvement District	\$ 75,000	0	\$75,000	RFP statement of work being drafted.
17	Sustainable Neighborhood Program	\$ 60,000	0	\$60,000	Pending program design and planning
	Economic Vitality Subtotal	\$ 4,145,000	\$ 2,080,985	\$ 2,064,015	
18	Park Rehabilitation	\$ 4,386,815	\$ 13,897	\$4,372,918	IFB for park playground rehabilitation scheduled for release by mid-October; RFP for design services for park rehabilitation scheduled to close by Oct. 12.
19	Public Safety Facilities' Rehabilitation	\$ 250,000	0	\$250,000	Funds will be allocated to CIP 3403 titled Fire Station Improvements with the FY 2022-23 Mid-year budget adjustments.
20	Mobile Emergency Operations Center (MEOC)	\$ 425,000	0	\$425,000	Vehicle build is in process. 20% complete. Full delivery expected in Summer 2023
	Infrastructure Subtotal	\$ 5,061,815	\$ 13,897	\$ 5,047,918	
21	Public Safety Staffing	\$ 1,200,000	\$ 406,233	\$793,767	Four(4) firefighters currently funded. Two(2) police officer recruitments in progress.
22	Fire Pumper Truck	\$ 920,000	\$ 455,580	\$464,420	Manufacturer purchase and order in progress.
23	Emergency Management Program Assessment Study	\$ 200,000	0	\$200,000	The first three annexes are complete. The remaining 17 will be complete by January 2023.
24	Catalytic Converter Public Safety Initiative	\$ 200,000	0	\$200,000	Program business outreach will launch in upcoming weeks.
	Public Safety Subtotal	\$ 2,520,000	\$ 861,813	\$ 1,658,187	
25	Human Resources Information System	\$ 1,100,000	0	\$1,100,000	Request for Information (RFI) in progress.
26	Financial Management System	\$ 100,000	0	\$100,000	Propose swap of funding with General Fund.
27	Cybersecurity Programs and Training	\$ 300,000	\$ 6,428	\$293,572	User training service contract completed. Looking for additional systems and services.
28	Technology Infrastructure	\$ 610,000	\$ 277,563	\$332,437	Initial end-user equipment purchase completed. Year 2 batch purchase in progress.
	Technology Subtotal	\$ 2,110,000	\$ 283,991	\$ 1,826,009	
29	ARPA Funds Administration	\$ 350,000	\$ 72,860	\$277,140	Procurement administration in progress.
	Administration Subtotal	\$ 350,000	\$ 72,860	\$ 277,140	
	Grand Total	\$ 16,736,815	\$ 3,432,730	\$ 13,304,085	