# MILPITAS CITY COUNCIL AGENDA
# TUESDAY, JUNE 2, 2015

***455 EAST CALAVERAS BLVD, MILPITAS, CA***

***5:30 PM (CLOSED SESSION)***
***6:00 P.M. (STUDY SESSION)***
***7:00 P.M. (PUBLIC BUSINESS)***

## SUMMARY OF CONTENTS

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

**II.** **CLOSED SESSION**

**a)** Per California Government Code 54957, Public Employee Appointment/Hiring of the position of Legal Counsel

**b)** Per California Government Code 54956.9, Conference with Legal Counsel regarding Anticipated Litigation with City as Defendant

**III.** **CLOSED SESSION ANNOUNCEMENT** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present

**IV.** **STUDY SESSION – Proposed Development at Serra Center** (6:00 p.m.)

**V.** **PLEDGE OF ALLEGIANCE** (7:00 p.m.)

**VI.** **INVOCATION** (Mayor Esteves)

**VII.** **APPROVAL OF COUNCIL MEETING MINUTES –** May 19, 2015

**VIII.** **SCHEDULE OF MEETINGS – COUNCIL CALENDAR –** June 2015

**IX.** **PUBLIC FORUM**

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

**X.** **ANNOUNCEMENTS**

**XI.** **ANNOUNCEMENT OF CONFLICT OF INTEREST**

**XII.** **APPROVAL OF AGENDA**

**XIII.** **CONSENT CALENDAR** (Items with asterisks*)

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

## XIV. PUBLIC HEARINGS

1. **Conduct a Public Hearing and Adopt Resolution Approving the Annual Engineer's Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (Staff Contact: Steve Erickson, 408-586-3301)**

2. **Conduct a Public Hearing and Adopt Resolution Approving the Annual Engineer's Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (Staff Contact: Steve Erickson, 408-586-3301)**

3. **Conduct a Public Hearing and Adopt a Resolution Approving Issuance of the California Municipal Finance Authority Multifamily Housing Revenue Bonds in an Aggregate Principal Amount Not to Exceed $45,000,000 to Refinance Acquisition, Construction, Improvement and Equipping of The Crossings at Montague Apartments and Certain Related Matters (Staff Contact: Emma Karlen, 408-586-3145)**

## XV. UNFINISHED BUSINESS

4. **Per Request of Mayor Esteves, Consider Establishing an Ethics Hotline (Staff Contact: Tom Williams, 408-586-3050)**

5. **Per Request of Mayor Esteves, Discuss and Consider Options to Require Affordable Housing Units on Current and Future Development Projects Prior to Completion of a Nexus Study (Staff Contact: Michael Ogaz, 408-586-3040)**

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

## XVI. REPORT OF MAYOR AND COMMISSION

7. **Per Request of the Recycling & Source Reduction Advisory Commission and Mayor Esteves, Consider Anew a Request to the City Council to Discuss Possible Ban on Single-Use Plastic Shopping Bags (Staff Contact: Steven Machida, 408-586-3355)**

## XVII. NEW BUSINESS

8. **Receive Drought Status Report and Water Conservation Program Measures from Officials of the Santa Clara Valley Water District (Staff Contact: Steven Machida, 408-586-3355)**

*** 9. Consider Request from Hindu Swayamsevak Sangh to Waive Fee for Rental of Outdoor Park to Celebrate International Yoga Day on June 21, 2015 (Staff Contact: Mary Lavelle, 408-586-3001)**

*** 10. Approve a New Capital Improvement Program Project and Approve a Budget Appropriation for Disadvantaged Community Americans with Disabilities Act Curb Ramps, Project No. 4278 (Staff Contact: Steve Chan, 408-586-3324)**

## XVIII. ORDINANCES

11. **Introduce Ordinance No. 65.144 Relating to Solar Permit Streamlining in Accordance with State Law (Staff Contact: Keyvan Irannejad, 408-586-3244)**

12. **Introduce Ordinance No. 208.51 to Amend Section VIII-2-5.38 of the Milpitas Municipal Code Relating to Wastewater Discharge Permits (Staff Contact: Steve Machida, 408-586-3355)**

*** 13. Waive the Second Reading and Adopt Ordinance No. 197.13 Relating to Reorganization of Departments (Staff Contact: Emma Karlen, 408-586-3145)**

*** 14. Waive the Second Reading and Adopt Ordinance No. 289 Relating to Contract and Settlement Authority (Staff Contact: Emma Karlen, 408-586-3145)**

## XIX. RESOLUTIONS

*** 15. Adopt a Resolution Approving Sole Source Purchase of the Advanced Digital Audio Collection System 4 from SyTech Corporation for the Police Department in the Amount of $26,739.38 and Approving the Maintenance and Support Agreement at Annual Cost of $10,308 (Staff Contact: Chris Schroeder, 408-586-3161)**

*** 16. Adopt a Resolution Authorizing the Purchase of a Breathing Air Compressor System From Bauer Compressors for the Fire Department For a Total of $64,351.76 (Chris Schroeder, 408-586-3161)**

*** 17. Adopt a Resolution Supporting the Mechanism for Cost Recovery Associated Mutual Aid Requests Made through the California Fire Assistance Agreement (Staff Contact: Rick Frawley, 408-586-2824)**

## XX. AGREEMENTS

*** 18. Approve an Agreement with Data Compliance Services for Transient Occupancy Tax Audit Services for Fiscal Year 2015-16 in an Amount Not-To-Exceed $20,500 (Staff Contact: Chris Schroeder, 408-586-3161)**

*** 19. Approve Amendment No. 4 to Extend the Agreement with DataProse, LLC from July 1, 2015 to June 30, 2016 in an Amount Not to Exceed $62,500 for Utility Bill Printing and Mailing Services (Staff Contact: Chris Schroeder, 408-586-3161)**

*** 20. Approve Amendment No. 9 Extending the Agreement with Jensen Landscape Services, Inc. for Services in the McCarthy Ranch Landscape and Lighting Maintenance District No. 95-1 for Ninety Days and Increasing the Contract by $18,219.75 to $415,422.75 (Staff Contact: Chris Schroeder, 408-586-3161)**

*** 21. Approve an Agreement with Quality Assurance Engineering, Inc. Doing Business as Consolidated Engineering Laboratories for On-Call Construction Inspection and Materials Testing Services for Various Capital Improvement Projects (Staff Contact: Steve Erickson, 408-586-3301)**

*** 22. Approve Amendment No. 1 to the Agreement with HMH Inc. for Additional Design Services and Increasing Compensation in the Additional Amount of $36,000 for Montague Expressway Widening Project No. 4179 (Staff Contact: Steve Erickson, 408-586-3301)**

*** 23. Approve an Agreement with ID Modeling, Inc. for Hydraulic Modeling of the Recycled Water System and a Budget Appropriation of $49,980, Project No. 7118. (Staff Contact: Steve Machida, 408-586-3355)**

*** 24. Approve Amendment No. 7 to the Master Agreement with the Santa Clara Valley Transportation Authority (VTA) Relating to the Silicon Valley Rapid Transit Berryessa BART Extension Project and the Montague Widening Project and Authorize Payment of $2,700,000 to VTA for City Infrastructure Upgrades (Staff Contact: Steve Machida, 408-586-3355)**

## XXI. DEMAND

*** 25. Approve Payment of Annual Software Support and Maintenance Fees (Staff Contact: Mike Luu, 408-586-2706)**

## XXII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING**
**TUESDAY, JUNE 16, 2015 AT 7:00 P.M.**

### 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, boards, and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: mogaz@ci.milpitas.ca.gov / Fax: 408-586-3056 / Phone: 408-586-3040

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

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

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

**APPLY TO BECOME A CITY COMMISSIONER!**

Current vacancies exist on the:
*Community Advisory Commission*
*Veterans Commission*

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

*If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at (408) 586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings.*

## AGENDA REPORTS

## XIV. PUBLIC HEARINGS

**1. Conduct a Public Hearing and Adopt Resolution Approving the Annual Engineer's Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** On May 19, 2015, the City Council adopted Resolution of Intention No. 8479 to levy annual assessments for the Landscaping and Lighting Maintenance Assessment District No. 95-1. The District was created in 1995 and provides for servicing and maintenance of public landscaping and pedestrian lighting along North McCarthy Boulevard and the gateway features on Ranch Drive. An annual public hearing is necessary to adopt the Annual Engineer's Report to provide funds for the district. Total assessment for the district in the Annual Engineer's Report is $290,738.36 for the FY 2015-16, and it is within the previously approved range of assessments.

**Fiscal Impact:** None.

**Recommendations:**
1. Open the public hearing, receive any written protests, and hear testimony.
2. Move to close the public hearing.
3. Adopt a Resolution approving the annual Engineer's Report, confirm diagram and assessment and ordering levy of assessments for fiscal year 2015-16 for Landscaping and Lighting Maintenance Assessment District No. 95-1 at McCarthy Ranch.

**2. Conduct a Public Hearing and Adopt Resolution Approving the Annual Engineer's Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** On May 19, 2015, the City Council adopted Resolution of Intention No. 8480 to levy annual assessments for the Landscaping and Lighting Maintenance Assessment District No. 98-1. The District was created in 1998 and provides for servicing and maintenance of public landscaping along Sinclair Frontage Road, Los Coches Creek and Berryessa Creek abutting the Sinclair Horizon residential subdivision. An annual public hearing is necessary to adopt the Annual Engineer's Report to provide funds for the district. Total assessment for the district in the Annual Engineer's Report is $38,053.07 for FY 2015-16, and it is within the previously approved range of assessments.

**Fiscal Impact:** None.

**Recommendations:**
1. Open the public hearing, receive any written protests, and hear testimony.
2. Move to close the public hearing.
3. Adopt a Resolution approving the Annual Engineer's Report, confirm diagram and assessment, and ordering levy of assessments for fiscal year 2015-16, for Landscaping and Lighting Maintenance Assessment District No. 98-1.

**3. Conduct a Public Hearing and Adopt a Resolution Approving Issuance of the California Municipal Finance Authority Multifamily Housing Revenue Bonds in an Aggregate Principal Amount Not to Exceed $45,000,000 to Refinance Acquisition, Construction, Improvement and Equipping of The Crossings at Montague Apartments and Certain Related Matters (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** On November 16, 1999, the City Council approved the 468-unit multifamily housing project known as The Crossings at Montague, located at 755 E. Capital Avenue, Milpitas (the "Project"). The facilities are owned by Montague Parkway Associates, LP, a

California limited partnership, and operated by Ray Douglas Ann & Patrick, Inc., doing business as RPM Company, a California corporation.

Multifamily housing projects that set aside a portion of their units for affordable housing qualify for tax-exempt bond financing. The bond financing program was established by both Federal and State law, and gives private developers access to below-market interest rates for housing projects that include affordable units. Under the law, 20% of the units in the project must be set aside and made available only to individuals and families who earn no more than 50% of the County median income. The Project, as approved by the City Council, requires the developer to set aside 94 of the 468 units for occupancy by individuals and families whose income is 50% or less of the area median gross income. Therefore, the Project qualifies for tax-exempt financing through the issuance of bonds.

In June 2000, the City of Milpitas issued $45 million of tax-exempt and $15 million taxable multifamily revenue bonds (the "2000 Bonds") to finance the construction of the apartment complex. Montague Parkway Associates, LP ("Borrower") is responsible for the principal and interest payments and all the expenses related to the issuance and on going administration of the 2000 Bonds.

Montague Parkway Associates, LP wishes to refinance the 2000 Bonds and has requested the California Municipal Finance Authority ("CMFA") to serve as the municipal issuer of the Bonds in an aggregate principal amount not to exceed $45,000,000 of tax-exempt multifamily housing revenue bonds. The proceeds of the Bonds will be used to: (1) refinance the acquisition, construction, improvement and equipping of the Crossing at Montague Apartments and (2) pay certain expenses incurred in connection with the issuance of the Bonds.

In order for all or a portion of the Bonds to qualify as tax-exempt bonds, the City of Milpitas must conduct a public hearing under the Tax and Equity Fiscal Responsibility Act (the "TEFRA Hearing") providing for the members of the community an opportunity to speak in favor of or against the use of tax-exempt bonds for the financing of the Project. Prior to such TEFRA Hearing, reasonable notice must be provided to the members of the community. Following the close of the TEFRA Hearing, an "applicable elected representative" of the governmental unit hosting the Project, which is the Milpitas City Council, must provide its approval of the issuance of the Bonds for the financing of the Project.

The CMFA was created on January 1, 2004 pursuant to a joint exercise of powers agreement to promote economic, cultural and community development, through the financing of economic development and charitable activities throughout California. To date, over 200 municipalities, including the City of Milpitas, have become members of CMFA.

The CMFA was formed to assist local governments, non-profit organizations and businesses with the issuance of taxable and tax-exempt bonds aimed at improving the standard of living in California. The CMFA's representatives and its Board of Directors have considerable experience in bond financings.

The Joint Exercise of Powers Agreement provides that the CMFA is a public entity, separate and apart from each member executing such agreement. The debts, liabilities and obligations of the CMFA do not constitute debts, liabilities or obligations of the members executing such agreement.

The bonds to be issued by the CMFA for the project will be the sole responsibility of the Borrower, and the City will have no financial, legal, moral obligation, liability or responsibility for the Project or the repayment of the Bonds for the financing of the Project. All financing documents with respect to the issuance of the Bonds will contain clear disclaimers that the Bonds are not obligations of the City or the State of California, but are to be paid for solely from funds provided by the Borrower.

Participation by the City in the CMFA will not impact the City's appropriations limits and will not constitute any type of indebtedness by the City. Outside of holding the TEFRA hearing, adopting the required resolution and executing the Joint Exercise of Powers Agreement of the CMFA, no other participation or activity of the City or the City Council with respect to the issuance of the Bonds will be required.

**Fiscal Impact:** It is expected a portion of the issuance fee will be granted by the CMFA to the General Fund of the City. Such grant may be used for any lawful purposes of the City.

**Recommendations:**
1) Open the public hearing under the requirements of TEFRA and the Internal Revenue Code of 1986, as amended (the "Code").
2) Move to close the public hearing following any comments.
3) Adopt a resolution approving the issuance of the bonds by the CMFA for the benefit of Montague Parkway, LP, a California limited partnership, to provide for the financing of the Project. Such adoption is solely for the purposes of satisfying the requirements of TEFRA, the Code and the California Government Code Section 6500 (and following).

## XV. UNFINISHED BUSINESS

**4. Per Request of Mayor Esteves, Consider Establishing an Ethics Hotline (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** At one of Valley Transportation Authority's Board of Directors' meetings, the General Manager reported its new Ethics Hotline available to its employees, vendors, and contractors 24 hours a day. Mayor Esteves asked staff to review the ethics hotline program and pursue a work plan for implementation in the City of Milpitas.

This item is to seek City Council direction on considering a similar ethics hotline for the City of Milpitas employees, vendors, and contractors. Per adopted City Council policy, since the research and work program efforts of City staff will exceed four hours, and this program was not previously approved, a majority of the City Council must agree to move forward with the project.

The purpose of the hotline would be to establish a program for City of Milpitas' employees and those doing business with the City to report conduct that violates the City's standard of business conduct, such as fraud, waste, abuse or theft, and not for customer service related issues. City of Milpitas staff would not manage or be involved with this system. The hotline would be administered and hosted by a third party provider in order to maintain independence and confidentiality to the extent provided by law.

**Fiscal Impact:** Unknown at this time. Estimated costs are between $15,000 and $40,000 per year.

**Recommendation:** Receive a report, direct the City Manager to commence with further research and return to City Council with specifics for an ethics hotline program.

**5. Per Request of Mayor Esteves, Discuss and Consider Options to Require Affordable Housing Units on Current and Future Development Projects Prior to Completion of a Nexus Study (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** On April 28, 2015, in response to the Planning Commission's recommendation to provide additional affordable housing units in the City of Milpitas, the City Council directed staff to conduct a nexus study regarding various options to support affordable housing for City Council review and consideration. Mayor Esteves was also concerned about approving current and future projects prior to the completion of a nexus study. The Mayor requested this issue be placed on the Council agenda for further discussion.

In researching this subject further with Planning staff and the approach by other cities, five available options were identified, as follows:

1. The City Council may adopt an urgency interim ordinance to impose a moratorium on all residential developments until the affordable housing requirement is in place. This would halt residential approvals during the term of the moratorium. This moratorium may be imposed for a maximum period of up to two years.
2. The City Council may include affordable housing as a Condition of Approval requiring developers to build affordable units or to pay an in lieu fee at time of building permit issuance in accordance with a future ordinance that may be adopted by the City Council. This condition can apply to current incomplete and future development applications. However, this option can be complicated since the Condition of Approval has to provide enough specificity and detail to allow the developer to have reasonable notice of its future obligations.
3. A developer can voluntarily enter into a development agreement with the City to provide affordable housing.
4. If a developer requests deviation from the City's specific plan or zoning standards, the City could work with the developer to provide affordable housing as a public benefit as part of the project.
5. The City can allow current and future projects to move forward under the existing policies, guidelines and ordinances; only incomplete development applications or newly submitted applications after the effective date of any future ordinance would be subject to the affordable housing requirements.

**Recommendation:** Per request of Mayor Esteves, discuss and consider proposed affordable housing policy options.

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

**Background:** From April 13 through May 10, 2015, the Bay Area Air Quality Management District (BAAQMD) forwarded 184 complaints originating in Milpitas. 91 complaints identified a garbage odor, 7 complaints identified a sewage odor and 86 complaints did not identify an odor source. As of the last Council update, the City's odor reporting website has received 35 reported complaints.

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

## XVI. REPORT OF MAYOR AND COMMISSION

**7. Per Request of the Recycling & Source Reduction Advisory Commission and Mayor Esteves, Consider Anew a Request to the City Council to Discuss Possible Ban on Single-Use Plastic Shopping Bags (Staff Contact: Steven Machida, 408-586-3355)**

**Background:** The Recycling & Source Reduction Advisory Commission (RSRAC) requests that the City Council evaluate whether adopting a ban on plastic single-use carryout bags would serve the interests of the City. Various Bay Area regional organizations, including the Santa Clara County Recycling and Waste Reduction Commission (RWRC) and the Association of Bay Area Governments (ABAG) have encouraged local governments to restrict use of single-use bags because plastic bags are viewed as a source of litter and waste. Apart from joining the majority of Santa Clara cities which have already adopted a plastic bag ban, restricting single-use bag distribution will help the City of Milpitas meet its stormwater permit and litter control requirements at lower costs and reduce environmentally harmful trash in storm drains and creeks.

The Recycling and Source Reduction Advisory Commission (RSRAC) made a vote of approval to recommend to the City Council such a potential ban on single-use plastic bags at its April 28, 2015 meeting.

On December 3, 2013, proposed Ordinance No. 287 to ban such bags was denied on a 3 – 2 vote of the City Council. That ordinance could be reconsidered by the current City Council.

**California Environmental Quality Act:** The City participated in an EIR report led by San Mateo County.

**Alternative:** Fail to pursue a ban on single use plastic bags and maintain status quo in Milpitas.

**Fiscal Impact:** None. There is no fiscal impact from this recommended action.

**Recommendation:** At the request of RSRAC and the Mayor, consider the issue of banning single-use carryout plastic bags in Milpitas, and direct staff accordingly.

## XVII. NEW BUSINESS

**8. Receive Drought Status Report and Water Conservation Program Measures from Officials of the Santa Clara Valley Water District (Staff Contact: Steven Machida, 408-586-3355)**

**Background:** At the request of the Mayor and City Manager, Director Richard Santos and the General Manager Beau Goldie of the Santa Clara Valley Water District will present the status of the drought in 2015 and the recommended water conservation program measures that all water retailers should implement.

As the City Council is well aware, California is experiencing the fourth year of a severe drought. The City has implemented many water conservation measures but additional measures are needed to ensure that future water is available should the drought continue. Director Santos and GM Goldie will present information to the Council on the drought status, the effects that the drought has had on the environment and what measures water retailers should implement in their water conservation programs.

**Recommendation:** Receive a drought status report and hear water conservation program measures from Santa Clara Valley Water District Director Richard Santos and General Manager Beau Goldie.

*** 9. Consider Request from Hindu Swayamsevak Sangh to Waive Fee for Rental of Outdoor Park to Celebrate International Yoga Day on June 21, 2015 (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** On May 20, 2015, the City Clerk received a "Donation or Fee Waiver/Reduction Request Application Form" from Hindu Swayamsevak Singh, Inc. USA. The request is for the City Council to waive certain City fees for the upcoming June 21 event at Dixon Landing Park, where several hundred participants are expected. The location has been reserved and deposit fees paid toward the costs for site rental. Fees requested to be waived are $680 for rental of the park. This group is an IRS 501c3 non-profit group, with a local chapter in Milpitas.

**Fiscal Impact:** $20,000 was approved and included in the FY 2014-15 City budget for City Council's Unallocated Community Promotions. If the current fee waiver is approved, then $12,860.25 would be the remaining balance.

**Recommendation:** Waive $680 fee for rental cost for outdoor Dixon Landing Park by Hindu Swayamsevak Sangh USA for its International Yoga Day event on June 21, 2015.

*** 10. Approve a New Capital Improvement Program Project and Approve a Budget Appropriation for Disadvantaged Community Americans with Disabilities Act Curb Ramps, Project No. 4278 (Staff Contact: Steve Chan, 408-586-3324)**

**Background:** On May 18, 2015, the City Council allocated $60,648 in FY 2015-16 Community Development Block Grant (CDBG) funds for public improvements that benefit low- and moderate-income persons. This new project will install new Americans with Disabilities Act compliant pedestrian curb ramps serving various low to moderate income neighborhoods within the City. Specific locations will be chosen based on areas with a population having at least 51% low-moderate area median income. City Council ios requested to approve the new Capital Improvement Program (CIP) project and authorize funding of the project with the necessary budget appropriation.

**Alternative:** Denial of this request may result in relinquishment of $60,648 in CDBG funding.

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

**Fiscal Impact:** A budget appropriation is required for this project. The Engineer's Estimate for the work is $100,000. $60,648 in FY 2015-16 Community Development Block Grant (CDBG) funding are allocated and approved for this project. Remaining City matching funds of $39,352 are available from Gas Tax funds.

**Recommendations:**
1. Approve a new CIP Project, Disadvantaged Community ADA Curb Ramps, Project No. 4278.
2. Approve a budget appropriation of $39,352 from the Gas Tax Fund and $60,648 from FY 2015-16 CDBG Funds to the Disadvantaged Community ADA Curb Ramps, Project No. 4278.

## XVIII. ORDINANCES

**11. Introduce Ordinance No. 65.144 Relating to Solar Permit Streamlining in Accordance with State Law (Staff Contact: Keyvan Irannejad, 408-586-3244)**

**Background**: Section 65850.5(a) of the California Government Code provides that it is the policy of the state to promote and encourage installation and use of solar energy systems by limiting obstacles to their use and by minimizing the permitting costs of such systems. In furtherance of that objective, Section 65850.5(g)(1) of the California Government Code requires that, on or before September 30, 2015, every city, county, or city and county must adopt an ordinance that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems.

The City of Milpitas currently expedites the review of such applications by reviewing and issuing applications for photovoltaic solar systems permits through its express plan checking services. The City also currently can accept and approve such applications electronically through the City's web site. The City, however, needs to adopt the ordinance mandated by Section 65850.5(g) (1), which must be effective by September 30, 2015. Proposed Ordinance No. 65.144 is intended to satisfy that requirement. It codifies requirements of Section 65850.5(g)(1), such as accepting and approving applications through the City's web site, directing the City's Building Official to develop a checklist of all requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review, and authorizes the Building Official to administratively approve such applications.

**Fiscal Impact**: None. As noted, the Building and Safety Department is already providing expedited review of applications for small residential rooftop solar systems. The ordinance merely codifies the requirement under state law.

**Recommendations**:
1. Following a reading of the title by the City Attorney, move to waive the first reading beyond the title of Ordinance No. 65.144.
2. Introduce Ordinance No. 64.144 to add new Section 1.5 to Title II of the Milpitas Municipal Code to include provisions relating to solar permit streamlining.

**12. Introduce Ordinance No. 208.51 to Amend Section VIII-2-5.38 of the Milpitas Municipal Code Relating to Wastewater Discharge Permits (Staff Contact: Steve Machida, 408-586-3355)**

**Background:** The City of Milpitas contracts for sanitary wastewater treatment at the San Jose/ Santa Clara Water Pollution Control Plant (WPCP) under the 1983 "Master Agreement for Wastewater Treatment between City of San Jose, City of Santa Clara, and City of Milpitas." This agreement requires that the City of Milpitas and other tributary agencies adopt, amend, and revise their sewer ordinances whenever City of San Jose amends their ordinance to comply with current regulatory requirements established by the Plant's National Pollutant Discharge Elimination System (NPDES) permit.

The City of San Jose revised its sewer ordinance based on a combination of recommendations and audit requirements from the Environmental Protection Agency. The new requirement prohibits transferring, selling, or assigning discharge permits to new owners, users, premises, or changed operations without prior approval of the Director. A red-lined copy of the proposed ordinance is included in the Council packet.

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

**Alternative:** If the City Council does not adopt these changes, the City will be non-compliant with the Master Agreement for Wastewater Treatment with the Cities of San Jose and Santa Clara.

**Fiscal Impact:** None. There are no fiscal impacts for the recommended action.

**Recommendations:**
1. Following the City Attorney's reading of the title of Ordinance No. 208.51, move to waive the first reading beyond the title.
2. Introduce Ordinance No. 208.51 amending Section VIII-2-5.38 of Milpitas Municipal Code.

*** 13. Waive the Second Reading and Adopt Ordinance No. 197.13 relating to Reorganization of Departments (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** On May 19, 2015, the City Council introduced an ordinance to reorganize City departments by separating Engineering and Public Works into two distinct departments and by assigning the Recreation Services Division to directly report to the City Manager. Ordinance No. 197.13 is now ready for a second reading and adoption.

**Recommendation:** Waive the second reading and adopt Ordinance No. 197.13 amending the Milpitas Municipal Code to re-organize the City departments.

*** 14. Waive the Second Reading and Adopt Ordinance No. 289 Relating to Contract and Settlement Authority (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** On May 19, 2015, the City Council introduced an ordinance to codify the contract and settlement authority of City staff. Ordinance No. 289 is now ready for a second reading and adoption.

**Recommendation:** Waive the second reading and adopt Ordinance No. 289 amending the Milpitas Municipal Code to include the contract and settlement authority of City staff.

## XIX. RESOLUTIONS

*** 15. Adopt a Resolution Approving Sole Source Purchase of the Advanced Digital Audio Collection System 4 from SyTech Corporation for the Police Department in the Amount of $26,739.38 and Approving the Maintenance and Support Agreement at Annual Cost of $10,308 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background**: On April 15, 2014, the City Council accepted the 2014 Citizen Options for Public Safety (COPS) grant in the amount of $108,325.00 and the corresponding spending plan proposed by the Police Department. The spending plan included an allocation of $30,300.00 for software and surveillance equipment, which has been identified as the Advanced Digital Audio Collection System 4 (ADACS4) by SyTech Corporation.

The ADACS4 system enables law enforcement agencies to intercept, track, record, and analyze switch based voice, video, and data communications when authorized by a court order or under exigent circumstances. The proposed system includes software and hardware installation, training, technical support, and network service connections maintained by SyTech to all major mobile carriers (a significant advantage). The initial first year cost, including all support and connectivity, is $26,739.38. Technical support, system upgrades and mobile carrier connectivity are provided starting in the second year in the annual amount of $10,308.00 per year. Future COPS Grants will be used to cover this cost in years two through five.

Pursuant to Milpitas Municipal Code Section I-2-3.09 “Sole Source Procurement,” the City’s Purchasing Agent determined, after conducting a good faith review of the available sources for competing systems, that there are no competitors that offer a system with all of the operational features, hardware, installation, training, technical support and network connections to all major mobile carriers similar to Sytech.

**Fiscal Impact**: None. The 2014 COPS Grant will fully cover the cost.

**Recommendation**: Adopt a resolution:
1) authorizing purchase of the ADAC S4 system by SyTech Corp. at a cost of $26,739.38 pursuant Municipal Code section on sole source procurement; and
2) approving a maintenance and support agreement with SyTech Corporation in the annual amount of $10,308.00 and for a term from July 1, 2016 to June 30, 2020, subject to City Council appropriation of funds and without further Council action.

*** 16. Adopt a Resolution Authorizing the Purchase of a Breathing Air Compressor System From Bauer Compressors for the Fire Department For a Total of $64,351.76 (Chris Schroeder, 408-586-3161)**

**Background:** In December 2013, the Fire Department submitted an Assistance to Firefighters Grant application requesting funding for a new breathing air compressor system. The Department of Homeland Security awarded the grant to the City in September of 2014 in the amount of $48,713.00. The Assistance to Firefighters Grant provides funding directly to fire departments to enhance operational response capabilities and firefighter safety. The required local matching portion is $15,638.76 for which funds are available in the Equipment Replacement Fund.

Pursuant to Milpitas Municipal Code Section I-2-3.07 "Piggyback Procurement," the City's Purchasing Agent may arrange for the City to enter into purchase contracts without completing its own competitive process if certain findings are made. The Purchasing Agent must determine that (i) there are no local suppliers or contractors, (ii) another public agency completed a competitive process in substantial compliance with the City's requirements, (iii) City's specifications are similar, (iv) purchase price is lower than if the City made the purchase through its own process, (v) a competitive process was completed within the past two years, and (vi) City enters into the same terms and conditions with the vendor selected by the originating agency.

On April 16, 2015 the town of Castle Rock, Colorado awarded a nationally advertised Request for Proposal for "SCBA Breathing Air System" to Centennial Fire and Safety Equipment for the same model of Bauer breathing air compressor system the Milpitas Fire Department sought to purchase. Bauer Compressors agreed to offer the same pricing and terms of that procurement to the City of Milpitas. After conducting a good faith review of the Request for Proposal process of the town of Castle Rock, CO, the Purchasing Agent determined that the Castle Rock process is in compliance with the City of Milpitas Municipal Code requirements under Section I-2-3.07 "Piggyback Procurement" and all the findings can be made.

**Fiscal Impact:** $15,638.76 in local matching funds is available in the Equipment Replacement Fund.

**Recommendation:** Adopt a resolution approving the piggyback procurement of a breathing air compressor system from Bauer Compressors for the Fire Department in the total amount of $64,351.76.

***17. Adopt a Resolution Supporting the Mechanism for Cost Recovery Associated Mutual Aid Requests Made through the California Fire Assistance Agreement (Staff Contact: Rick Frawley, 408-586-2824)**

**Background:** Milpitas Fire Department provides mutual aid fire response to jurisdictions outside of the City of Milpitas when requested through the California Emergency Management Agency (Cal EMA). The reimbursement of the cost of this assistance is defined through the California Fire Assistance Agreement (CFAA). The CFAA is the negotiated reimbursement mechanism for local government fire agency responses through the California Fire Service and Rescue Emergency Mutual Aid System.

In order to recover the total cost for this type of mutual aid deployment, Cal EMA is requesting that a resolution be adopted by the City of Milpitas that will support "portal to portal" reimbursement of equipment and personnel costs.

**Fiscal Impact:** Adoption of this resolution will support portal to portal reimbursement for resources when requested through the CFAA and ensure that the support of mutual is cost neutral.

**Recommendation:** Adopt a resolution supporting the reimbursement to the Milpitas Fire Department of mutual aid costs through the Cal EMA funding process.

## XX. AGREEMENTS

*** 18. Approve an Agreement with Data Compliance Services for Transient Occupancy Tax Audit Services for Fiscal Year 2015-16 in an Amount Not-To-Exceed $20,500 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The City's agreement with Tax Compliance Services expired due to the death of the owner in 2014. The City's Purchasing Agent worked with Finance staff to develop a Request for Quotation (RFQ) No. 2085 for Transient Occupancy Tax Audit services for Fiscal Year

2015-16. The City of Milpitas issued a Request for Quotation on April 1, 2015. Five consulting companies that provide this type of service were solicited and three responded as noted.

| Bidder | Amount |
|---|---|
| Compliance Data Services | $20,500.00 |
| Kevin W. Harper CPA & Associates | $50,000.00 |
| MuniServices, LLC | $23,850.00 |

Compliance Data Services was the lowest responsive and responsible bidder. After posting the Notice of Intent to Award (Pending Bid Results), no protest was filed. The firm is committed to meet the City's audit timeline.

**Fiscal Impact:** $20,500. This is a programmed expense in the FY 2015-16 Finance Department operational budget.

**Recommendation:** Approve an agreement with Compliance Data Services for Transient Occupancy Tax (TOT) audit services in the total amount of $20,500 for a term from July 1, 2015 to June 30, 2016.

*** 19. Approve Amendment No. 4 to Extend the Agreement with DataProse, LLC from July 1, 2015 to June 30, 2016 in an Amount Not to Exceed $62,500 for Utility Bill Printing and Mailing Services (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** On March 12, 2007, the City issued a Request for Proposals (RFP) related to electronic bill presentment and payment for utility invoices as well as utility bill printing and mailing services. As a result of the RFP, DataProse LLC was awarded a three year contract with three-one year renewal options.

The City Council approved Amendment No. 3 that extended the agreement to June 30, 2015 and modified the scope of work by separating the electronic bill presentment and payment from the utility bill printing and mailing services. Due to changes and improvement in electronic billing technology, it was anticipated that by modifying the scope of work so that different contractors can provide different part of the services will result in better service delivery. DataProse continues to provide the billing printing and mailing services.

Staff intends to issue a RFP for utility bill printing and mailing services in the next fiscal year. Meanwhile, DataProse LLC continues to provide very good service and has agreed to favorable pricing until the competitive process is concluded. As such, staff requests an additional twelve month contract extension from July 1, 2015 to June 30, 2016. The cost for the utility bill printing and mailing services is $17,500 and $45,000 for postage for FY 2015-16, for a total cumulative amount of $686,000.

**Fiscal Impact:** None. This is a programmed expense in the FY 2015-16 Finance Department operational budget.

**Recommendation:** Approve Amendment No. 4 to extend the agreement with DataProse, LLC to June 30, 2016 for an amount not to exceed $62,500 for utility bill printing and mailing services.

*** 20. Approve Amendment No. 9 Extending the Agreement with Jensen Landscape Services, Inc. for Services in the McCarthy Ranch Landscape and Lighting Maintenance District No. 95-1 for Ninety Days and Increasing the Contract by $18,219.75 to $415,422.75 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background**: In August, 2010, Jensen Landscape Service, Inc. was awarded a three year contract with two, one-year options to provide landscape maintenance service in the McCarthy Ranch

Landscape and Lighting Maintenance District No. 95-1. On August 21, 2013 the City Council approved Amendment No. 8 to the agreement which included various one time repairs to the irrigation system and an annual increase in the value of the contract for the remaining two years to cover unforeseen incidental irrigation repairs and annual plantings, resulting in a five year total contract value of $407,681.00. The agreement is currently up for rebid but due to changes related to State of California water rules and additional work not contemplated in the original contract, staff needs more time to complete the scope of work. Staff proposes that the current agreement be extended ninety days from August 30, 2015 to November 30, 2015 and the total value be increased by $18,219.75 to allow additional time to complete the Scope of Work and rebid the contract.

**Fiscal Impact**: None. This is a programmed expense approved in the FY 2015-16 budget for the McCarthy Ranch Landscape Maintenance District No. 95-1.

**Recommendation**: Approve Amendment No. 9 to extend the agreement with Jensen Landscape Services, Inc for 90 days from August 30, 2015 to November 30, 2015 and increase the agreement by $18,219.75 for a total contract amount of $425,900.75.

*** 21. Approve an Agreement with Quality Assurance Engineering, Inc. Doing Business as Consolidated Engineering Laboratories for On-Call Construction Inspection and Materials Testing Services for Various Capital Improvement Projects (Staff Contact: Steve Erickson, 408-586-3301)**

**Background**: City of Milpitas issued a Request for Proposal (RFP) for on-call special construction inspection and materials testing services to support the completion of the City's Capital Improvement Program (CIP) construction projects. Several consultants submitted proposals and were interviewed in accordance with the City's policy on consultant selection. Quality Assurance Engineering, Inc. DBA Consolidated Engineering Laboratories (CEL) was the highest ranked proposer and staff recommends awarding a contract to them for the required services. This would be a five year contract, and services would be provided on a time and materials basis for a total not to exceed contract amount of $1,000,000. CEL will provide special construction inspection and materials testing services required for the completion of the City's Capital Improvement Program projects. Examples of special inspection services include asphalt pavement testing, concrete strength testing, welding inspection, and nuclear gauge soil density testing to determining proper compaction. The respective CIP project budgets and cost plans are sufficient to fund the services to be provided.

**Fiscal Impact**: None. Sufficient funds are available in the project budget for these services.

**Recommendation**: Approve an agreement with Quality Assurance Engineering, Inc. doing business as Consolidated Engineering Laboratories, in the amount of $1,000,000, and for a term from July 1, 2015, to June 30, 2020, for construction inspection and materials testing services for various Capital Improvement Program projects.

*** 22. Approve Amendment No. 1 to the Agreement with HMH Inc. for Additional Design Services and Increasing Compensation in the Additional Amount of $36,000 for Montague Expressway Widening Project No. 4179 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** On August 19, 2014, the City entered into a consultant agreement with HMH Inc. in the amount of $152,100 to provide engineering design services for the widening of Montague Expressway from Berryessa Creek to Capitol Avenue. The project provides capacity improvements on Montague expressway by providing a total of eight through lanes on Montague from Great Mall Parkway to I-680. Bike use shoulders, improved pedestrian sidewalks, new culvert and bridge over Berryessa Creek, and widening improvements along South Milpitas Boulevard are included in the project. The agreement is from August 19, 2014 through August, 19, 2015.

Amendment No.1 with HMH Inc. is proposed for additional design services for installation of Transit Area Specific Plan (TASP) street lighting along portions of Montague Expressway and South Milpitas Boulevard, for the extension of the City's recycled water line along Montague Expressway and under Berryessa Creek, additional landscape median design, and for the installation of decorative steel security fencing in various locations rather than the standard Caltrans chain link fencing. Staff has negotiated a fee for these design services not to exceed $36,000. Approval of this agreement amendment brings the total agreement amount to $188,100.

**Alternative**: Denial of this request would result in not completing the recommended design services for City standard improvements along portions of Montague Expressway and South Milpitas Boulevard.

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

**Recommendation**: Approve Amendment No. 1 to the consultant agreement with HMH Inc., for Project No. 4179, increasing the agreement amount by $36,000 and extending the term to June 30, 2016.

*** 23. Approve an Agreement with ID Modeling, Inc. for Hydraulic Modeling of the Recycled Water System and a Budget Appropriation of $49,980, Project No. 7118 (Staff Contact: Steve Machida, 408-586-3355)**

**Background:** On May 5, 2015, Council approved a work plan for the water supply augmentation feasibility study prepared by Water Solutions, Inc. Three primary areas to pursue are: a conservation program, groundwater well system improvements, and recycled water system extensions. Recycled water extensions are planned east of I-680 to serve landscaping for hillside golf courses, schools, and parks.

The City began design of the first phase of the recycled water system expansion on June 17, 2014 to extend the recycled water system to the Sports Center and Cardoza Park. The City is seeking grant, loan, and/or bond funding for construction of this phase and design of future phases. The applications for State and Federal funding require a detailed project description, map showing improvements, feasibility report, environmental review, and estimated construction costs. Hydraulic modeling is required to determine pipeline size, and location and size of a pump station and reservoir. ID Modeling has provided hydraulic modeling services to the City of San Jose for the South Bay Water Recycling system, which serves the cities of Santa Clara, San Jose and Milpitas. Staff has negotiated with ID Modeling for the modeling of the proposed recycled water system extensions to not exceed the amount of $49,980. A budget appropriation in the amount of $49,980 is required to perform this work.

**Alternative:** If this Agreement is not approved, the City would not be able to position our projects in the State and Federal programs. To secure grant, loan, or bond funding for the desired recycled water pipeline extension.

**California Environmental Quality Act:** The Agreement is not a “Project” under CEQA as there will be no physical change to the environment by the execution of the agreement. This action is also exempt under CEQA Guidelines Section 15262 (Feasibility and Planning Studies).

**Fiscal Impact:** A budget appropriation of $49,980 is required from the Water Fund. The proposed water rate increase that was introduced at the May 19 Council meeting includes funding to issue $15 million debt service for water supply projects. The City will use this funding to begin the work plan tasks; however the debt service funding is expected to be available in early 2016. Grants typically require the City to perform the work and submit documentation for reimbursement.

**Recommendations:**

1. Approve an agreement with ID Modeling in an amount not to exceed $49,980.00 for a term from June 2, 2015 to July 31, 2016.
2. Approve a budget appropriation of $49,980 from the water fund to CIP No. 7118.

*** 24. Approve Amendment No. 7 to the Master Agreement with the Santa Clara Valley Transportation Authority (VTA) Relating to the Silicon Valley Rapid Transit Berryessa BART Extension Project and the Montague Widening Project and Authorize Payment of $2,700,000 to VTA for City Infrastructure Upgrades (Staff Contact: Steve Machida, 408-586-3355)**

**Background:** The extension of the Bay Area Rapid Transit (BART) system into Santa Clara County is being implemented by Valley Transportation Authority's (VTA) Silicon Valley Rapid Transit (SVRT) program. The City and VTA executed a Master Agreement in 2010, which created a cooperative frame work between VTA and the City for the design and construction of the BART line extension through Milpitas. This agreement allows for reimbursement of City expenses for a variety of coordination efforts, including but not limited to design approval and inspection of City facilities, encroachment permit oversight, easements, utility maintenance operations, meetings, resolution of construction issues, and consultant support. The agreement also establishes a mechanism for reimbursement to VTA for upgrades to City utilities within the work area.

Santa Clara County is proceeding with the Montague Widening Project in conjunction with the BART construction. Due to the complex coordination of two major adjacent construction projects, VTA has agreed to be the lead agency for both projects. Several City utility enhancements within the Montague Widening project work area have been identified. This proposed amendment refines the original utility upgrade estimates within the BART work area and adds new utility and streetscape upgrades in the Montague Widening project work area. The infrastructure upgrades include upgrade existing water line in Montague Expressway, install a smart meter antenna mount on the BART parking garage, install a recycled water pipeline extension from the railroad spur south of Garden Street on South Milpitas Boulevard to Montague Expressway and westerly along Montague Expressway to just west of the BART crossing and easterly across Berryessa Creek, miscellaneous water valves, upsize sanitary sewer pipe along Montague Expressway, install TASP streetlights, install median landscaping along Montague Expressway, and upgrade from chain link fencing to picket style fencing along Montague Expressway and South Milpitas Boulevard. Amendment No. 7 contains a detailed list of infrastructure upgrades (a copy is included in the Council agenda packet).

VTA is in the process of bidding the work for the Montague Widening Project. It would be most efficient to have VTA include the required City Infrastructure work as part of its project. However, an advance deposit to VTA for the upgraded City infrastructure as part of the Montague Widening Project is required at this time. Sufficient funding is available in three City capital improvement projects as of July 1, 2015 as shown below:

| | |
|---|---|
| BART Project – Water Improvements = | $1,820,000 |
| BART Project – Sewer Improvements = | $230,000 |
| Montague Widening Project 4179 = | $775,000 |
| Total | $2,825,000 |

**Alternative:** The City has already committed to infrastructure upgrades associated with the SVRT project with the execution of Amendment No. 1 to the Master Agreement in 2011. If this Amendment is not approved, the desired infrastructure upgrades associated with the Montague Widening Project will not be installed.

**California Environmental Quality Act:** The lead agencies for these projects, VTA and the County of Santa Clara, have prepared and adopted the necessary environmental documents.

**Fiscal Impact:** None. There will be sufficient funding in the three Capital Improvement Projects as of July 1, 2015.

**Recommendations:**
1. Approve Amendment No. 7 to the Master Agreement with the Santa Clara Valley Transportation Authority (VTA) relating to the Silicon Valley Rapid Transit Berryessa (BART) Extension Project (GT-1063) and the Montague Widening Project (CIP No. 4179).
2. Authorize the payment of $2,825,000 to Santa Clara VTA for City Infrastructure Upgrades after July 1, 2015.

## XXI. DEMAND

*** 25. Approve Payment of Annual Software Support and Maintenance Fees (Staff Contact: Mike Luu, 408-586-2706)**

**Background:** The City utilizes a number of automated systems for critical functions such as utility billings, human resources management and financial management. These systems require payment for annual support and maintenance fees in order to continue vendor support. This generally included telephone support, software fixes and new software versions. The following annual maintenance payments are now due and require payment in order to continue support through Fiscal Year 2015-16: (1) Cayenta (Finance and Human Resources management system) for $151,349.62; and, (2) Peelle Technologies (Document Management) for $23,144.00.

**Fiscal Impact**: Funding for these annual maintenance payments is included in the Information Services Department budget.

**Recommendation:** Authorize payments of annual support and maintenance to two vendors: Cayenta for $151,349.62 and Peelle Technologies for $23,144.00.

**NEXT REGULARLY SCHEDULED COUNCIL MEETING**
**TUESDAY, JUNE 16, 2015 AT 7:00 P.M.**

| May 2015 | | | | | | |
|---|---|---|---|---|---|---|
| S | M | T | W | T | F | S |
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 31 | | | | | | |

| July 2015 | | | | | | |
|---|---|---|---|---|---|---|
| S | M | T | W | T | F | S |
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

# MILPITAS CITY COUNCIL CALENDAR

## June 2015

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | **1**<br>**10:00 AM**-Silicon Valley Rapid Transit Program Working Committee (JE) | **2**<br>**6:00 PM**-Closed Session<br>**7:00 PM**-City Council | **3**<br>**7:30 AM**-Santa Clara VTA Northeast Group (JE)<br>**5:30 PM**-Veterans Commission (DG)<br>**7:00 PM**-Community Advisory Commission (CM) | **4**<br>**1:30 PM**-County Library Joint Powers Authority Board of Directors (CM)<br>**5:30 PM**-Santa Clara VTA Board of Directors (JE) | **5**<br>**6:00 PM**-Youth Advisory Commission Special Event—Math Competition | **6** |
| **7** | **8**<br>**6:00 PM**-Economic Development Commission (CM)<br>**6:30 PM**-Parks, Recreation & Cultural Resources Commission – site visit to Community Garden (GB) | **9** | **10**<br>**7:00 PM**-Planning Commission | **11**<br>**4:00 PM**-VTA Policy Advisory Committee (CM)<br>**4:30 PM**-Treatment Plant Advisory Committee (JE) (San Jose)<br>**7:00 PM**-Cities Assoc of SCC (JE) | **12** | **13** |
| **14** | **15**<br>**6:00 PM**-Campaign Finance Reform Committee<br>**7:00 PM**-Telecommunications Commission (GB)<br>**7:00 PM**-Library Advisory Commission (CM) | **16**<br>**6:00 PM**-Closed Session<br>**7:00 PM**-City Council | **17** | **18**<br>**12:00 PM**-Santa Clara VTA Congestion Management Program & Planning Committee (JE) | **19** | **20** |
| **21** | **22**<br>**7:00 PM**-Arts Commission | **23**<br>**1:30 PM**-Senior Advisory Commission (JE) | **24**<br>**7:00 PM**-Planning Commission | **25**<br>**12:00 PM**-Terrace Gardens Board of Directors (DG)<br>**5:30 PM**-Milpitas Chamber of Commerce Board (DG)<br>**6:00 PM**-Sister Cities Commission (MG) | **26** | **27** |
| **28** | **29**<br>**2:00 PM**-Milpitas Oversight Board | **30** | | | | |

Updated May 26, 2015

*Draft* MEETING MINUTES
CITY OF MILPITAS

| | |
|---|---|
| **Minutes of:** | **Joint Meeting of Milpitas City Council and Milpitas Housing Authority** |
| **Date:** | **Tuesday, May 19, 2015** |
| **Time:** | **6:00 PM Closed Session / 7:00 PM Open** |
| **Location:** | **Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas** |

---

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

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

**ABSENT:** None

**CLOSED SESSION** City Council convened in Closed Session to discuss litigation matters.

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

**ANNOUNCEMENT** None out of Closed Session.

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

**INVOCATION** At the invitation of Councilmember Grilli, local resident and Commissioner Syed Mohsin introduced Imam Rasheed from his mosque who provided the invocation prayer.

**MEETING MINUTES** <u>Motion</u>: to approve minutes of April 28 and May 5, 2015 City Council meetings

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

**SCHEDULE OF MEETINGS** <u>Motion</u>: to approve Council Calendars/Schedule of Meetings for May and June 2015

City Manager Tom Williams announced that the Planning Commission on May 27 was canceled.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**PRESENTATION** Mayor Esteves proclaimed May 14 – 22, 2015 as "Affordable Housing Week." The proclamation was accepted by Silicon Valley Housing Trust and local residents.

**PUBLIC FORUM** Jerry Epps, 1378 Mount Shasta resident, requested an agenda item to bring back ballot measures to extend prior Measures T and Z, related to the adopted hillside ordinances. These were due to expire soon and needed to be brought before the voters next year to extend the regulations.

Laura Mello, Milpitas resident, said there were four active earthquake faults in Milpitas, and if any one of those should have a destructive earthquake, that would make hillside development unwise. She metioned the visible slide on Mission Peak in Fremont, next to interstate highway 680.

Ray Maglalang, 1546 Lassen Ave. resident, requested to agendize the hillside ordinances on the next agenda to put it on the ballot for voters in June 2016.

Evelyn Chua, Coventry Lane resident, mentioned environmental costs if hillsides were not protected further, as a treasure for future generations. She wanted the Council to take this request seriously to bring the two measures to voters to extend the hillside protection.

Councilmember Giordano described what the two past ballot measures did, as approved in the 1990s (on Urban Growth boundary and one hillside protection). Mayor Esteves remarked that an assessment must be done by staff first, and report that to Council before any discussion about new ballot measures. The City Manager responded to this topic, stating that staff could bring that report to City Council on the seocnd Council meeting in June (6/16/2015).

David Wall, N San Pedro St, San Jose, commented about odors from Newby Island, problems at the San Jose Planning Commission due to members abstaining, and with further comments about an EIR, and environmental concerns about the landfill proposed expansion.

Rob Means, 1421 Yellowstone resident, talked about global warming and green building.

Voltaire Montemayor, Milpitas resident, talked about earthquakes and flooding, concerns for roadwork if there was flooding and the need for hydro-pumping water.

**ANNOUNCEMENTS**

City Manager Williams noted the Memorial Day holiday scheduled Monday, May 25 with a ceremony at City Hall Veterans Plaza outdoors at 9:00 AM.

Mayor Esteves said he would like to close the meeting in memory of former Mayor Jimmy Rogers, who had recently passed away.

**ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted with one change of order

The City Manager requested to move agenda item no. 8 (Senior Work Plan) to be heard first, prior to the public hearing items.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with *asterisk), as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

* 3. Appointments to Commission

On the Economic Development Commission, re-appointed Don Peoples and Warren Wettenstein as voting members to terms that will expire in April of 2018. Also, newly appointed Michael Strle from Milpitas Great Mall as the retail business representative and a regular voting member to a term that will expire in April of 2018.

* 6. Library Donation

Accepted the donation gift of $1,000 to the Milpitas Public Library and the spending plan recommended by the Library Advisory Commission.

* 7. Library Essay Contest

Appropriated $3,200 to the Library Advisory Commission budget to purchase prizes and event supplies for the Annual Essay Contest at Milpitas Public Library.

| | |
|---|---|
| * 9. Funds for Fire Dept. training equipment | Accepted $11,000 in funds from the Santa Clara County EMS Trust Fund for the purchase of Fire Department training equipment and approved a budget appropriation to the Fire Department's operating budget. |
| *10. 2015 COPS Grant | Accepted the 2015 Citizen Options for Public Safety (COPS) Grant in the amount of $110,690 and approved a budget appropriation in the amount of $110,690 to the Police Department's operating budget. |
| *11. Adopt Ordinance – PERS | Waived the second reading and adopted Ordinance No. 101.23, amending the City's agreement with CalPERS. |
| *12. Adopt Ordinance – Public Art | Waived the second reading and adopted Ordinance No. 38.821 (as revised) amending the Zoning section of Milpitas Municipal Code to include provisions relating to public art in private development projects. |
| *13. Resolution | Adopted Resolution No. 8478 awarding a contract to DeSilva Gates Construction and authorize the City Manager to execute the contract for 2014 Road Rehabilitation, Projects No. 4270, No. 4264 and No. 3412, in the total amount of $1,846,846.00; and authorizing the Director of Engineering to negotiate and execute contract change orders for 2014 Road Rehabilitation in the cumulative amount not to exceed $300,000.<br>Approved a budget appropriation for additional $2,000 Federal Surfacing Transportation Program grant fund totaling in $1,652,000 to the 2014 Road Rehabilitation. |
| *14. Resolution | Adopted Resolution No. 8479 approving the annual Engineer's Report, declaring intention to levy an assessment, and providing for notice of public hearing on June 2, 2015 for LLMD No. 95-1, McCarthy Ranch. |
| *15. Resolution | Adopted Resolution No. 8480 approving the annual Engineer's Report, declaring intention to levy an assessment and providing for notice of public hearing on June 2, 2015 for LLMD No. 98-1, Sinclair Horizon. |
| *16. Amendment – Hatch Mott Mac Donald LLC | Approved Amendment No.2 to the agreement with Hatch Mott MacDonald in the additional amount of $108,220 for Land Development Engineering services expiring on December 31, 2015. |
| *17. Agreement with HF&H | Approved an agreement with HF&H Consultants for technical support services for solid waste rate review for a not-to-exceed amount of $29,910 for a term from May 19, 2015 to June 30, 2016. |
| *18. Amend Agreement with York Insurance Group | Authorized the City Manager to execute an amendment to the current agreement with York Insurance Services Group, Inc. for Workers' Compensation Third Party Administrator extending the agreement effective July 1, 2015 through June 30, 2016 in accordance with the terms and conditions stated in the amendment in an amount not to exceed $129,000. |
| *19. Amendment – Jarvis, Fay, Doporto & Gibson | Approved seventh amendment to the agreement with law firm of Jarvis, Fay, Doporto & Gibson, LLP adding $19,500 for continuing necessary legal services. |
| *20. Agreement to Recruit Human Resources Director | Authorized the City Manager to execute an agreement with William Avery & Associates, subject to approval as to form by the City Attorney, in an amount not to exceed $23,900 for the administration of recruitment and selection for a Human Resources Director and approved budget appropriation of $23,900. |

**PUBLIC HEARINGS**

| | |
|---|---|
| **1.** FY 2015-16 Budget | City Manager Tom Williams reviewed a summary of the accomplishments of City departments in the past Fiscal Year 2014-15. He identified the FY 2015-16 Budget Objectives, including maintaining the core services of the City. He listed the items |

incorporated into the proposed new budget, including those identified by City Council at the budget study session held last month.

Assistant City Manager/Finance Director Emma Karlen explained the request to propose to increase staff by seven positions to fill vacant City positions next year. Reclassification actions included establishing two Deputy Fire Chiefs (changing one Fire Marshal and one 40-hour Battalion Chief), among others. She explained the recommended change in the method of funding the City's contribution to CalPERS along with two minor changes in the city's Fiscal Policies. Additionally, two proposed new ordinances would: (1) separate the Public Works and Engineering departments and assign Recreation Services Division to report directly to the City Manager; and, (2) amend the settlement and contract authority of the City Manager.

Finance Director Emma Karlen presented the plan for a balanced budget in FY 2015-16, totaling $139.9 million in all funds, including General Fund, enterprise funds and others. Total revenues anticipated and the planned expenditures were reviewed for next year, including the totals for next year's Capital Improvement Program. The total City budget would represent a 14.3% increase over the prior fiscal year.

Councilmembers asked Ms. Karlen various questions throughout the presentation and she responded. Councilmember Barbadillo asked her to explain the various changes proposed by ordinance and in the fiscal policies.

Following the City Manager and Assistant City Manager, City Department Heads presented one by one a very brief review of each department's budget for FY 2015-16, and to reply to questions from the Mayor and Council.

Councilmember Giordano had asked about historical costs of the City Attorney's office between a contracted attorney versus in-house services and outside attorneys, in reference to a memo Council had received with the costs identified. She noted in the past there had been a Council City Attorney subcommittee and thought it should be re-constituted to review the costs. The Mayor agreed with her suggestion and Councilmember Grilli volunteered to serve on such subcommittee along with Councilmember Giordano.

Councilmember Barbadillo left dais briefly at 9:28 pm.

Councilmember Giordano moved to create the City Council's City Attorney Subcommittee, and the motion was seconded by Councilmember Grilli. The motion was approved on a vote of 3 in favor, with Vice Mayor Montano opposed and Councilmember Barbadillo absent at the time of the vote.

Vice Mayor Montano voted no because she felt if this review of costs was done for one department – City Attorney - then it should be done for all.

Councilmember Giordano asked Planning Director Bill Ekern about neighborhood blight and code enforcement issues. City Manager Williams asked for clarification of what to bring back to City Council and Councilmember Grilli asked for a comprehensive report about code enforcement, including parking issues. Mrs. Grilli asked City Engineer Steven Machida to reach out and communicate with the Pines neighborhood homeowners.

The Capital Improvement Program budget was ready to be presented by staff, however since it was discussed the previous week at a study session, no review of the next year's CIP was given at this meeting. Mayor Esteves invited the City Engineer to the podium to answer any questions and there were none.

At 11:00 PM, Mayor Esteves opened the public hearing for comments.

1) Robert Marini, Milpitas resident, noted generally there an 8% increase in every department for personnel costs while future years' costs at a lower percent increase were

unrealistic. He believed the funding majority was from property taxes but there was a drought situation ongoing in Milpitas.

2) David S. Wall, San Jose resident, commented on the "auditing" type function the City Council performed this evening. He suggested not to underestimate costs for the City Attorney's office, as it needed to be well funded.

3) Rob Means, 1421 Yellowstone, spoke of costs for health care benefits for employees. He supported a single-payer healthcare system in U.S. and that would help reduce costs overall including for City of Milpitas. He also supported a parking permit system, as mentioned by the previous speaker.

4) Voltaire Montemayor, Milpitas resident, felt that all of what was presented by department staff deserved to be approved.

5) Steve Siddell, Milpitas resident, noted the challenge of governance with tight budget constraints and public unions. He did not have answers and it could be worthwhile to have people come in from free enterprise to review City processes, while he also supported what unions did. He supported the need for more police officers in Milpitas.

(1) <u>Motion</u>: to close the public hearing, following five speakers

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

City Attorney Ogaz read aloud the title of Ordinance No. 197.13, "An Ordinance of the City of Milpitas Amending Section 1.00 of Chapter 3, Title VI of the Milpitas Municipal Code to Separate Engineering and Public Works into Two Departments and Assign the Recreation Services Division to Report Directly to the City Manager Department."

(2) <u>Motion:</u> to waive the first reading beyond the title of Ordinance No. 197.13

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(3) <u>Motion:</u> to introduce Ordinance No. 197.13

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

City Attorney Ogaz read aloud the title of Ordinance No. 289, "An Ordinance of the City of Milpitas Adding Chapters 4 and 5 to Title I of the Milpitas Municipal Code Relating to Contract and Settlement Authority."

(4) <u>Motion</u>: to waive the first reading beyond title of Ordinance No. 289

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(5) <u>Motion</u>: to introduce Ordinance No. 289

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(6) Motion: to adopt the Joint Resolution No. 8474 / HA15 of the City Council and the Housing Authority approving the final Budget & Financial Plan for the City of Milpitas for Fiscal Year 2015-16

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

(7) Motion: to adopt the following three Resolutions:

a) Resolution No. 8475 amending the City's Classification Plan, relative to adding two Deputy Fire Chief positions, delete "confidential" from Office Specialist position in City Clerk's office, and delete some vacant positions

b) Resolution No. 8476 approving amended Fiscal Policies, specifically including a change in method for funding annual required contribution to Cal PERS

c) Resolution No. 8477 adopting the appropriations limit for the City of Milpitas for Fiscal Year 2015-16 of $

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Councilmember Giordano specified that her motion included not hiring of the Deputy City Attorney position until the new City Attorney Subcommittee first met to review those costs for that department.

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

At the conclusion of the budget public hearing at 11:19 PM, Mayor Esteves announced the City Council would continue with agenda item No. 2 (public hearing on utility rate) while other agenda items would be continued.

**2.** Water and Sewer Rate Ordinances

City Engineer Steven Machida introduced the water and sewer rate recommendations in the proposed ordinances. He explained current costs for wholesale water and the large cost increases imposed on the City to purchase water from the City's two main wholesale sources, necessitating the 38% increase in rates to be charged to customers. Mr. Machida displayed a chart comparing Milpitas rates to neighboring cities.

The City Engineer also reviewed costs and expenses related to sewer charges, including flow rates per the updated study, to City of Milpitas customers.

Mayor Esteves opened the public hearing at 11:40 PM.

Robert Marini, Milpitas resident, commented on sewer rate charges, and the notice which separated out costs for water and sewer fees. He displayed his own chart overhead.

David S. Wall, San Jose resident, remarked on the calculations by the previous speaker and those were not fair to ratepayers. He talked about San Jose's method on some specific rates calculated in that city, and wastewater and reclaimed water plan.

Voltaire Montemayor, Milpitas resident, commented about the new rates, a loss of revenue, and working all for one with sacrifice.

Gary Long, Milpitas resident, wished to learn clearly the rates for multi-family structures versus single family home. He felt the Council was "sticking it" to single family homeowners with the proposed rates. Sewer rates were way out of line, he claimed.

Motion: to close the public hearing

Motion/Second: Councilmember Grilli/Councilmember Barbadillo

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

Mr. Machida did not have an immediate response to Mr. Long. Mayor Esteves wanted an assurance that rates were very-well and carefully calculated. Mr. Machida responded that the flow study was updated a few years ago, and was used to base the sewer rates on.

Vice Mayor Montano did want to hear information about multi-family versus single family home sewer rate calculations. The Mayor asked Mr. Machida to review and explain the slide that showed figures on this topic, for rate calculations.

(1) Motion: to accept the Utility Rate Report

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

City Attorney Mike Ogaz read aloud the titles of two ordinances:

Ordinance No. 120.47, "An Ordinance of the City of Milpitas Amending Chapter 1 of Title VIII of the Milpitas Municipal Code Relating to Water Service Charges."

Ordinance No. 208.51, "An Ordinance of the City of Milpitas Amending Chapter 2 of Title VIII of the Milpitas Municipal Code Relating to Sewer Charges."

(2) Motion: to waive the first readings beyond the titles of Water Ordinance No. 120.47 and Sewer Ordinance No. 208.50

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(3) Motion: to introduce Water Ordinance No. 120.47 and Sewer Ordinance No. 208.50 to amend Title VIII of the Milpitas Municipal Code to establish water and sewer rates

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(4) Motion: to authorize mailing of Proposition 218 hearing notices

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(5) Motion: to establish Tuesday, August 4, 2015 as the public/protest hearing date for the water and sewer rates by ordinance

The five votes on the above actions took place after 12:00 midnight, so the technical date of the votes occurred early on Wednesday, May 20, 2015.

**REPORTS**

4. Affordable Housing Policy — This matter was not heard, and would be continued.

5. Ethics Hotline — This matter was not heard, and would be continued.

**8.** Senior Advisory Commission work plan — This matter was heard first on the agenda, prior to the public hearings.

Recreation Services Supervisor Stephanie Douglas reviewed the established purpose of the Senior Advisory Commission. With her were several Commissioners, including SAC Chair Barbara Ebright. Ms. Douglas identified the five workplan goals for FY 2014-15, and those for the future FY 2015-16 workplan.

Councilmembers provided some compliments to the Commission and staff, and asked brief questions to staff.

Mayor Esteves invited speakers from the audience.

Robert Marini, Milpitas resident, requested two additional computers for use at the Senior Center and add one more printer too. The City spent $11 million for the new Senior Center, but it was not open adequate hours for all seniors who might want to use the facility. He said the center should be open on the weekend for a few hours.

<u>Motion</u>: to receive a presentation and approve the Senior Advisory Commission's FY 2015-16 Work Plan

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**NEW BUSINESS** — Two items were approved on consent calendar.

**ORDINANCES** — Two ordinances were adopted on consent calendar.

**RESOLUTIONS** — Three resolutions were adopted on consent calendar.

**AGREEMENTS** — Five items were approved on the consent calendar.

**ADJOURNMENT** — Mayor/Chair Esteves adjourned the joint City Council/Housing Authority meeting at 12:04 AM on Wednesday, May 20 in memory of former Mayor J. Rogers.

*Meeting minutes respectfully submitted by*
*Mary Lavelle, City Clerk*

# RESOLUTION NO. _____

## A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING ANNUAL ENGINEER'S REPORT, CONFIRMING DIAGRAM AND ASSESSMENT AND ORDERING LEVY OF ASSESSMENT FOR FISCAL YEAR 2015-2016 FOR LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1

**WHEREAS**, by its Resolution No. 8470, A Resolution Directing Preparation of Annual Report for the City of Milpitas Maintenance Assessment District No. 95-1 (the "Maintenance District"), this Council ordered the Engineer to make and file a report in writing in accordance with and pursuant to the Landscaping and Lighting Act of 1972; and

**WHEREAS**, the report was duly made and filed with the City Clerk and duly considered by this Council and found to be sufficient in every particular, whereupon it was determined that the report should stand as the Annual Engineer's Report for all subsequent proceedings under and pursuant to the aforesaid Resolution, and that June 2, 2015, at the hour of 7:00 p.m., or shortly thereafter in the Milpitas City Council Chambers, 455 East Calaveras Boulevard, Milpitas, California, was appointed as the time and place for a hearing by this Council on the question of the levy of the proposed assessment, notice of which hearing was given as required by law; and

**WHEREAS**, at the appointed time and place the hearing was duly and regularly held, and all persons interested desiring to be heard were given an opportunity to be heard, and all matters and things pertaining to the levy were fully heard and considered by this Council, and all oral statements and all written protests or communications were duly heard, considered and overruled, and this Council thereby acquired jurisdiction to order the levy and the confirmation of the diagram and assessment prepared by and made a part of the Engineer's Report to pay the costs and expenses thereof.

**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 public interest, convenience and necessity require that the levy be made.

3. The Maintenance District benefited by the improvements and assessed to pay the costs and expenses thereof, and the exterior boundaries thereof, are as shown by a map thereof filed in the office of the City Clerk, which map is made a part hereof by reference thereto.

4. The Engineer's Report as a whole and each part thereof are finally approved and confirmed, including:

   (a) the Engineer's estimate of the itemized and total costs and expenses of maintaining the improvements and of the incidental expenses in connection therewith; and

   (b) the diagram showing the assessment district, plans and specifications for the improvements to be maintained and the boundaries and dimensions of the respective lots and parcels of land within the Maintenance District; and

   (c) the assessment of the total amount of the costs and expenses of the proposed maintenance of the improvements upon the several lots and parcels of land in the Maintenance District in proportion to the estimated benefits to be received by such lots and parcels, respectively, from the maintenance, and of the expenses incidental thereto.

5. Final adoption and approval of the Annual Engineer's Report as a whole, and of the plans and specifications, estimate of the costs and expenses, the diagram and the assessment, as contained in the report, as hereinabove determined and ordered, is intended to and shall refer and apply to the report, or

any portion thereof as amended, modified, or revised or corrected by, or pursuant to and in accordance with, any resolution or order, if any, heretofore duly adopted or made by this Council.

6. The assessment to pay the costs and expenses of the maintenance of the improvements for fiscal year 2015-2016 is hereby levied. For further particulars pursuant to the provisions of the Landscaping and Lighting Act of 1972, reference is hereby made to the Resolution Directing Preparation of Annual Engineer's Report.

7. Based on the oral and documentary evidence, including the Annual Engineer's Report, offered and received at the hearing, this Council expressly finds and determines (a) that each of the several lots and parcels of land will be specially benefited by the maintenance of the improvements at least in the amount, if not more than the amount, of the assessment apportioned against the lots and parcels of land, respectively, and (b) that there is substantial evidence to support, and the weight of the evidence preponderates in favor of, the aforesaid finding and determination as to special benefits.

8. Immediately upon the adoption of this Resolution, but in no event later than the third Monday in August following such adoption, the City Clerk shall file a certified copy of the diagram and assessment and a certified copy of this Resolution with the Auditor of the County of Santa Clara. Upon such filing, the County Auditor shall enter on the County assessment roll opposite each lot or parcel of land the amount of assessment thereupon as shown in the assessment. The assessments shall be collected at the same time and in the same manner as County taxes are collected, and all laws providing for the collection and enforcement of County taxes shall apply to the collection and enforcement of the assessments. After collection by the County, the net amount of the assessments, after deduction of any compensation due the County for collection, shall be paid to the Director of Financial Services/Treasurer of the City.

9. Upon receipt of moneys representing assessments collected by the County, the Director of Financial Services/Treasurer shall deposit the moneys in the City Treasury to the credit of the improvement fund previously established under the distinctive designation of the Maintenance District. Moneys in the improvement fund shall be expended only for the maintenance, servicing, construction or installation of the improvements.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: APPROVED:

_________________________________ _________________________________

Mary Lavelle, City Clerk Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_________________________________

Michael J. Ogaz, City Attorney

1B

# City of Milpitas

## Landscaping and Lighting Maintenance Assessment District No. 95-1

## Fiscal Year 2015/16 Annual Report

**Main Office**
32605 Temecula Parkway, Suite 100
Temecula, CA 92592
Toll free: 800.676.7516  Fax: 951.296.1998

**Regional Office**
870 Market Street, Suite 1223
San Francisco, CA 94102
Toll free: 800.434.8349  Fax: 415.391.8439

**helping communities fund tomorrow**

**CITY OF MILPITAS**
**LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1**
**455 East Calaveras Boulevard**
**Milpitas, California 95035**
**Phone - (408) 586-3000**

---

**CITY COUNCIL**

Jose Esteves, Mayor

Carmen Montano, Vice-Mayor

Debbie Indihar Giordano, Council Member

Garry Barbadillo, Council Member

Marsha Grilli, Council Member

**CITY STAFF**

Steve Erickson, CIP Manager

Steve Machida, Acting Public Works Director/City Engineer

**NBS**

Tim Seufert, Client Services Director

Tiffany Ellis, Senior Consultant

Jason Roth, Consultant

# TABLE OF CONTENTS

# 1. ENGINEER'S LETTER

**WHEREAS,** in 1995 the City Council of the City of Milpitas (the "City"), State of California, under the Landscaping and Lighting Act of 1972 (the "Act"), created the City of Milpitas Maintenance Assessment District No. 95-1 (the "District"). The District was formed in order to provide for the continued maintenance, operation, and administration of various improvements within the boundaries of the District.

**WHEREAS,** the City Council has directed NBS to prepare and file a report for Fiscal Year 2015/16 in accordance with Chapter 1, Article 4 of the Act presenting plans and specifications describing the general nature, location and extent of the improvements to be maintained; an estimate of the costs to maintain, operate, and service the improvements for the District for the referenced fiscal year; a diagram for the District showing the area and properties to be assessed; and an assessment of the estimated costs to maintain and service the improvements, stating the net amount to be assessed upon all assessable lots or parcels within the District in proportion to the special benefit received.

**NOW THEREFORE, t**he following assessments have been levied in accordance with the assessment methodology adopted and approved by the City Council at the time of District formation, and are made to cover the portion of the estimated costs of maintenance, operation, and servicing of the improvements, to be paid by the assessable real property within the District in proportion to the special benefit received:

| **District** | **Parcels** | **2015/16 Maximum Assessment Rate per Lot Square Foot** (1) | **2015/16 Actual Assessment Rate per Lot Square Foot** | **Net Amount to be Assessed** (2) |
|---|---|---|---|---|
| LLMAD 95-1 | 36 | $0.0404 | $0.02464 | $290,738.36 |

(1) The April 1, 2015 CPI was not available at the time of writing of this Report. The Fiscal Year 2015/16 CPI increase was estimated by using the February 2015 CPI.
(2) Amounts placed on the tax roll include the 1% Santa Clara County Collection Fee.

I identified all parcels which will have a special benefit conferred upon them from the improvements described in District's Plans and Specifications section of this Engineer's Report (the "Benefited Parcels"). For particulars as to the identification of said parcels, reference is made to the Assessment Diagram, a copy is on file in the office of the City Clerk.

I have assessed the costs and expenses of the improvements upon the Benefited Parcels. In making such assessment:

a. The proportionate special benefit derived by each Benefited Parcel from the improvements was determined in relationship to the entirety of the maintenance costs of the improvements;

b. No assessment has been imposed on any Benefited Parcel which exceeds the reasonable cost of the proportional special benefit conferred on such parcel from the improvements; and

c. Any general benefits from the improvements have been separated from the special benefits and only special benefits have been assessed.

I, the undersigned, respectfully submit the enclosed Engineer’s Report and, to the best of my knowledge, information and belief, the Engineer’s Report, Assessments, and the Assessment Diagrams herein have been prepared and computed in accordance with the order of the City Council of the City of Milpitas, the Act, and Article XIIID.

Brian K. Thomas, PE
Assessment Engineer

# 2. PLANS AND SPECIFICATIONS

The District provides for the continued administration, maintenance, operation, and servicing of various improvements located within the public right-of-way and dedicated easements within the boundaries of the District.

## 2.1. Location Of Improvements

The District is located on the west side of the City of Milpitas, bounded on the east by State Route 880, on the west by Coyote Creek, on the south by State Route 237, and on the north by Dixon Landing Road. The improvements maintained include public landscaping and irrigation improvements, including jogging paths, pedestrian lighting, gateway improvements, and entry signage, which are primarily situated within the public right-of-way and dedicated public by easements within the District.

## 2.2. Landscaping Improvements

Landscaping, pedestrian lighting, gateway and signage improvements were installed along the roadways and sidewalks within the District in order to enhance the overall visual appearance for adjacent parcels.

The improvements within the District consist of the maintenance and installation of any or all public landscaping and irrigation improvements adjacent to curbs of the following described streets, including jogging paths, planter walls, grass berms, pedestrian lighting and appurtenant irrigation systems, ornamental planting including lawns, shrubs, and trees; installation and maintenance of gateway columns and entry signs; such maintenance includes all necessary repairs, replacements, water, electric current, spraying, care, supervision, debris removal and all other items of work necessary and incidental for property maintenance and operation thereof. The landscaping, irrigation, pedestrian lighting, gateway and signage improvements are collectively referred to as "landscaping improvements". All such work will be performed in the following areas:

**N. McCarthy Boulevard**

1. A strip of land including an earth berm approximately 50 feet in width from face of each curb line, from the southerly connection with Ranch Drive northerly 2,400 feet, more or less, to the northerly connection with Ranch Drive. A strip of land including a grass berm approximately 35 feet in width, west of the face of westerly curb, along the West Side of N. McCarthy Boulevard, from the southerly connection with Ranch Drive, northerly 2,400 feet, more or less. The initial phase includes a strip of land 6 feet wide on the west side of McCarthy Boulevard.

2. Commencing at a location approximately 2,400 feet north of State Route 237 thence proceeding north to the northern boundary of Lands of N. McCarthy, 7,800 feet more or less, a strip of land approximately 27 to 34 feet in width on each side along the east and west sides of McCarthy Boulevard between the northerly connection with Ranch Drive and Dixon Landing Road.

3. A median island from the southerly intersection with Ranch Drive northerly to the intersection with Dixon Landing Road.

4. Gateway Improvements, at the southerly intersection of N. McCarthy Boulevard and Ranch Drive and southerly of Bridge No 1 along N. McCarthy Boulevard, including curved stone planter walls, gateway columns with entry sign appurtenant mounding ornamental plantings including flat work, trees and ground cover, irrigation systems; all as shown on landscape plans.

5. Lighting costs in the Maintenance Assessment District are limited to the supplemental pedestrian lights installed between each of the 2 street lights on the section of curved walkway located on the East Side of N. McCarthy Boulevard. The conventional lighting along McCarthy Boulevard is not included.

**Milpitas Entry Sign**

1. City of Milpitas Entry Identification Sign along N. McCarthy Blvd., including walls, columns, lighting and other appurtenances.

**Ranch Drive**

1. Commencing at a Northerly location where the right-of-way of Ranch Drive is contiguous with the right-of-way of Interstate 880, thence southerly, a strip of land approximately 10 feet in width measured from the east face of curb of Ranch Drive, from the northerly connection with Interstate 880 and Ranch Drive, southerly 630 feet, more or less, thence 405 feet south to the southerly end of Gateway location, varying in width from 10 feet to 132 feet, more or less.

2. Gateway Improvements, at the southerly connection of Ranch Drive and Interstate 880, including curved stone planter walls, gateway columns with entry sign appurtenant mounding ornamental plantings including flat work, trees and ground cover, irrigation systems; all as shown on landscape plans (Part A), except the Shopping Center's Monument Sign.

## *2.3. Overhead*

In addition to the hard costs of maintaining the improvements mentioned above, the City will incur costs for staff time and expenses related to the management and maintenance of the improvements within the District. Staff time includes oversight and coordination of both City and contractor provided services, annual tax roll preparation, and addressing property owner questions and concerns. These activities are directly related to the maintenance of the improvements, and without them the improvements could not be efficiently completed or properly maintained on an ongoing basis.

# 3. ESTIMATE OF COSTS

The estimated costs of maintenance and servicing of the improvements as described in the Plans and Specifications are summarized below. Each year, as part of the assessment district levy calculation process, the costs and expenses are reviewed and the annual costs are projected for the following fiscal year.

## 3.1. District Budget

The Fiscal Year 2015/16 estimated cost budget for the maintenance and servicing of the improvements is as follows:

| Description | Budget 2015/2016 |
|---|---|
| Landscape Maintenance Contract Services[1] | $134,675 |
| Capital Equipment | 0 |
| Supplies | 1,000 |
| Utilities (Water, Electricity) | 53,500 |
| City Maintenance Staff | 49,322 |
| Capital Improvement Program | 17,690 |
| **Maintenance Costs** | **$256,187** |
| | |
| NBS Financial | $7,375 |
| NBS Report Review | 18,950 |
| City Staff District Admin | 3,000 |
| County Auditor-Controller Fee[2] | 2,907 |
| **District Specific Costs** | **$32,232** |
| | |
| Total District Costs | **$288,419** |
| General Benefit Contribution[3] | (15,371) |
| Operating Reserve Contribution | 17,690 |
| **Net Amount to be Assessed** | **$290,738** |
| | |
| **Total District Square Footage**[4] | 11,801,275 |
| **Rate per Square Foot**[5] | **$0.02464** |
| **Maximum Rate Per Square Foot – 2015/16**[6] | **$0.0404** |

(1) For 2015/16 Landscape Maintenance Contract Services includes Jensen Landscape $78,705 and Irvine Company $55,397.
(2) County Auditor-Controller Fee is currently 1% of the total levy submittal.
(3) General Benefit Contribution is not applied to District Specific Costs as these are special benefits to the District.
(4) Total District Square Footage includes the 50% reduction for Parcel 5-7 (Sewer Main Pump Station) and Parcel 5-3C (Storm Pump Station).
(5) The Rate per Square Foot equals the Net Amount to be Assessed / Total District Square Footage.
(6) The actual Rate per Square Foot levied cannot exceed the Maximum Rate per Square Foot. The April 2015 CPI was not available at the time of writing of this Report. The Fiscal Year 2015/16 CPI increase was estimated by using the February 2015 CPI.

### Operating Reserve

It is the intent of the City to maintain an operating reserve which shall not exceed the estimated costs of maintenance and servicing of the improvements prior to December 10 of the fiscal year, or when the City expects to receive its apportionment of special assessments and tax collections from the County, whichever is later. The operating reserve balance information for the District is as follows:

| | |
|---|---|
| Estimated Fiscal Year Ending 6/30/2015 Operating Reserve Cash Balance | $107,000 |
| Operating Reserve Collection – Fiscal Year 2015/16 | 17,690 |
| **Estimated Fiscal Year Ending 6/30/2016 Operating Reserve Cash Balance** | **$124,690** |

# 4. SPECIAL AND GENERAL BENEFIT

The improvements defined in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits are described below.

## 4.1. Introduction

Pursuant to Article XIIID, all parcels that receive a special benefit conferred upon them as a result of the installation, implementation and maintenance of the improvements, services and activities shall be identified, and the proportionate special benefit derived by each identified parcel shall be determined in relationship to the entire costs of the installation, implementation and maintenance of the improvements, services and activities.

Article XIIID, Section 4(a) of the California Constitution limits the amount of any assessment to the proportional special benefit conferred on the property. Proposition 218 requires that the City separate the general benefit from special benefit, so that only special benefit may be assessed to properties within the District. Furthermore, Article XIIID also provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment.

## 4.2. Special Benefits Identified

The improvements described in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits conferred to property within the District can be grouped into three primary benefit categories: aesthetic benefit, safety benefit and economic benefit. The three district benefit categories are further expanded upon below.

- **Improved Aesthetics:** The aesthetic benefit relates to the increase in the overall aesthetics as a result of the ongoing maintenance, servicing and operation of the improvements within the District. The landscaping improvements enhance the overall image and desirability of the properties within the District. Street landscaping improvements improve the livability, commercial activity, appearance and desirability for properties within the District. Regular maintenance ensures that the improvements do not reach a state of deterioration or disrepair so as to be materially detrimental to properties adjacent to or in close proximity to the improvements. The overall appeal of the District is enhanced when improvements are in place and kept in a healthy and satisfactory condition. Conversely, appeal decreases when improvements are not well-maintained, unsafe, or destroyed by the elements or vandalism. Streetscapes have a significant effect on how people view and interact with their community.[1] With streetscapes that are safe and inviting, people are more likely to walk, which can help reduce automobile traffic, improve public health, stimulate local economic activity and attract residents and visitors to the community.[2]

- **Increased Safety:** Well maintained areas mitigate crime, especially vandalism, and enhance pedestrian safety. A recent study found that after landscape improvements were installed, there was a 46% decrease in crash rates across urban arterial and highway sites and a second study reviewed found a 5% to 20% reduction in mid-block crashes after trees and planters in urban arterial roads were put in place. In addition, there is less graffiti, vandalism, and littering in outdoor spaces with natural landscapes than in comparable plant-less spaces.[3] The Victoria Transport Policy

[1] Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities.* Retrieved from http://www.vtpi.org/tdm/tdm97.htm.
[2] Ibid.
[3] Wolf, Kathleen L. (2010). *Safe Streets – A Literature Review. In: Green Cities: Good Health* (www.greenhealth.washington.edu)*. College of the Environment, University of Washington.*

Institute has found that streetscapes reduce traffic speeds and when combined with improved pedestrian crossing conditions can significantly reduce collisions.[4]

- **Economic Activity:** Well maintained street landscape improvements not only make adjacent properties appear more stable and prosperous but can spur investment in the property. The National Complete Streets Coalition notes that street design that is inclusive of all modes of transportation, where appropriate, not only improves conditions for existing businesses, but also is a proven method for revitalizing an area and attracting new development.[5] Landscaped sidewalks create an inviting place for customers to shop and do business.[6] Well-maintained and safe District areas will encourage an increase in the overall pedestrian activity. The area will become more pedestrian friendly, thus improving the retail environment by encouraging individuals to shop, dine, and stay within the District boundaries. The District will provide a cleaner more inviting environment to businesses and consumers which will attract, retain and expand the retail and business climate throughout. The effort will reduce vacancy rates and increase lease rates and utilization of property within the District.

## 4.3. General Benefits Identified

Section 4 of Article XIIID of the California Constitution provides that once a local agency which proposes to impose assessments on property has identified those parcels that will have special benefits conferred upon them and upon which an assessment will be imposed, the local agency must next “separate the general benefits from the special benefits conferred,” and only the special benefits can be included in the amount of the assessments imposed.

General benefit is an overall and similar benefit to the public at large resulting from the maintenance of the District’s improvements provided by the assessments levied. The improvements to be maintained by the District are located within the District boundaries only. There will be no District maintenance activities provided for improvements located outside of the District boundaries.

The ongoing maintenance of the District improvements will provide aesthetic, safety and economic activity benefits to the property within the District. However, it is recognized that the ongoing maintenance activities will also provide a level of benefit to some property within proximity to the District, as well as individuals passing through. Therefore, the general benefit created as a result of the District maintenance activities has been considered.

## 4.4. Quantification of Benefit

As a result of the maintenance and operation of the improvements, there will be a level of general benefit to people that do not work or intend to conduct business within the District. In order for property within the District to be assessed only for that portion of special benefits received from the district’s maintenance activities, general benefits provided by the ongoing maintenance of the improvements needs to be quantified. The amount of general benefit that is provided from the District’s maintenance activities cannot be funded via property owners’ assessments.

Based upon the City’s General Plan the streets within the City are classified into one of the following categories: freeway, expressway, arterial, collector or local streets. The landscaping improvements are primarily located along N McCarthy Boulevard and Ranch Drive, and situated within the public right-of-way. The portion of the maintained landscaping that is located along N McCarthy Boulevard (classified as an arterial street) provides some general benefit to pass-through traffic.

[4] Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities.* Retrieved from http://www.vtpi.org/tdm/tdm97.htm.
[5] Pugliese, Philip. (2008). *Complete Streets provide all the elements of multi-modal transportation.* Retrieved from http://www.americantrails.org/resources/trans/completestreets08.html
[6] U.S Department of Transportation. Federal Highway Administration. (2001). *Designing Sidewalks and Trails for Access, Part II of II: Best Practices Design Guide.* Retrieved from http://www.fhwa. dot. gov/environment/bicycle_pedestrian /publications/sidewalk2

Arterial streets are intended to provide a higher degree of mobility and generally serve longer vehicle trips. The landscape improvements within the District boundaries not only serve the parcels in the immediate vicinity, but persons who live outside of the District and are passing by. The City's Traffic Volumes Map[7] does not identify the percentage of traffic, which is pass-through traffic. The City's Traffic Volumes Map does provide an estimated number of daily trips for N McCarthy Boulevard at the entrance of the District.

| Street Name | Average Number of Vehicles per Day[1] |
|---|---|
| N McCarthy Boulevard – between SR 237 and Ranch Drive | 35,050 |

(1) Average Number of Vehicles per Day is from the City of Milpitas Traffic Volumes Map[8]

Before the determination and allocation of the percentage of special and general benefit for the District can be made, the estimated pass-through traffic must be computed. The pass-through trips are vehicles driving along the maintained streets for a portion of their trips, but not working, shopping or conducting business in the District or benefiting from the landscaping improvements in place. In lieu of having a study that identifies the pass-through traffic, the estimated number of special benefit trips for each parcel based upon its land use has been used. Each parcel within the District was assigned an average daily number of special benefit trips according to the ITE Trip Generation report using the parcel's land use, building size or number of units. Further, to make sure the number of trips generated by the parcels has not been overstated, the percentage of total trips that are made internally within the development so that both the original and end destination are within the District has been considered. The total special benefit trips have been reduced by approximately 29% (13,810 trips) to account for internal trips between the various businesses within the District. The total number of special benefit trips is therefore 33,708.

| Property Type | Combined Trip Generations |
|---|---|
| Hotel (ITE Land Use 310) | 2,328 |
| Office (ITE Land Uses 710, 714, 750) | 15,809 |
| Restaurant (ITE Land Uses 931, 932, 934) | 6,965 |
| Retail (ITE Land Uses 815, 820, 863, 869) | 22,416 |
| **Total Trips** | **47,518** |
| Internal Trip Reduction[1] | (13,810) |
| **Total Special Benefit Trips** | **33,708** |

(1) The internal trip rate percentage was calculated by using the NCHRP 684 Internal Rate Capture Estimation Tool.[9]

The total of all special benefit trips was removed from the average number of vehicles per day traveling within the District to estimate the number of pass-through trips daily.

| Street Name | Average Number of Vehicles per Day | Less: Estimated Special Benefit Trips | Estimated Number of Pass Through Trips | Estimated % General Benefit |
|---|---|---|---|---|
| McCarthy Boulevard | 35,050 | 33,708 | 1,342 | 3.83% |

[7] City of Milpitas. (2007). *Traffic Volume Map.* Retrieved from http://www.ci.milpitas.ca.gov
[8] Ibid.
[9] Bochner, Brian S., Hooper, Kevin, Sperry, Benjamin and Dunphy, Robert. National Cooperative Highway Research Program, Transportation Research Board of National Academies (2011). *NCHRP Report 684 Enhancing Trip Capture Estimation for Mixed-use Developments.* Retrieved from onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_684.pdf

Based on the above calculations, the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be 3.83%, rounded up to 4.00%.

| | |
|---|---|
| Pass-thru Vehicle General Benefit | 4.00% |

The commonly accepted distance people will walk for public transportation, goods and services is one-quarter mile.[10] However, based on the location of the District, and given that it is bounded by State Route 880 and 237, and Coyote Creek, there is not an efficient or practical means of walking into the District. Although unlikely, a person may decide to use the paths within the District, and as such the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be 1.00%.

| | |
|---|---|
| Pass-thru Walking General Benefit | 1.00% |

An estimated 1% of all US trips were made by bicycle.[11] Although the District is bounded by State Route 880 and 237, and Coyote Creek, there is a bike lane on N McCarthy Boulevard and a bike path along Coyote Creek.[12] According to the National Household Travel Surveys, 49% of bike trips are for recreation, exercise, and sports.[13] As result of the District maintenance activities, there will be a level of general benefit to bicycle traffic that is not associated with property in the District. As such the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be .50%, rounded up to 1.00%.

| | |
|---|---|
| Pass-thru Biking General Benefit | 1.00% |

**<u>Collective District-Wide General Benefit</u>**

Since the District is comprised of improved aesthetics, safety, and economic activity benefits resulting from the collective landscaping improvements, the activity of both pedestrians and vehicles must be addressed in a collective form rather than independently. The sum of the calculated general benefits is the total general benefit related to vehicle, walking, and biking pass-thru traffic. This general benefit result is provided in the table below:

| | |
|---|---|
| Pass-thru Vehicle General Benefit | 4.00% |
| Pass-thru Walking General Benefit | 1.00% |
| Pass-thru Biking General Benefit | 1.00% |
| **Total General Benefit** | **6.00%** |

The general benefit, which is the percentage of the total budget that must be funded through sources other than assessments, is 6.00%. The special benefit then, which is the percentage of the budget that may be funded by assessments, is 94.00%.

[10] Walkscore. (2014). Walk Score Methodology. Retrieved from http://www.walkscore.com/methodology.shtml
[11] [11] U.S Department of Transportation. Federal Highway Administration. (2011). *Summary of Travel Trends: 2009 National Household Travel Survey.* (Report No. FHWA-PL-11-022). Retrieved from http://nhts.ornl.gov
[12] City of Milpitas. (2002). *General Plan.* Retrieved from http://www.ci.milpitas.ca.gov
[13] *Pucher, J., Buehler R., Meron, F., and Bauman, A. American Journals of Public Health, Supplement 1, Vol 101, No S1 (2011).* Walking and Cycling in the United States, 2001-2009: Evidence from the National Household Travel Surveys. Retrieved from http://www.ncbi.nlm.nih.gov/pubmed/21551387

## 4.5. Special Benefit Trips

The detailed breakdown of the estimated special benefit trips for each parcel in the District is shown in the following table:

| Assmt ID | Assessor's Parcel No. | Land Use Description | Acreage | Gross Leasable Area | Average Trip Rate[1] | Estimated # of Daily Special Benefit Trips[2] |
|---|---|---|---|---|---|---|
| 1-1A-1 | 022-54-016 | 710 - General office | 1.06 | 4,046 | 11.03 | 44.63 |
| 1-1A-2 | 022-54-017[3] | 310 – Hotel | 3.29 | 161 | 8.17 | 1,315.37 |
| 1-1A-3 | 022-54-018[3] | 310 – Hotel | 2.31 | 124 | 8.17 | 1,013.08 |
| 1-1A-4 | 022-54-019 | 934 - Fast Food | 0.19 | - | 496.12 | - |
| 1-1B | 022-54-008 | 934 - Fast Food | 0.78 | 2,912 | 496.12 | 1,444.70 |
| 1-2 | 022-54-002[4] | 820 - Shopping Center | 0.58 | 5,400 | 42.70 | 230.58 |
| 1-3 | 022-54-003 | 932 - High Vol. Restaurant | 1.02 | 5,465 | 127.15 | 694.87 |
| 1-4A | 022-54-009[4] | 869 - Home Superstore | 8.47 | 100,000 | 20.00 | 2,000.00 |
| 1-4B | 022-54-012[4] | 820 - Shopping Center | 3.02 | 20,000 | 42.70 | 854.00 |
| 1-4C | 022-54-013 | 820 - Shopping Center | 0.23 | 10,000 | 42.70 | 427.00 |
| 1-4D | 022-54-015 | 931 - Quality Restaurant | 1.78 | 7,846 | 89.95 | 705.75 |
| 1-4E | 022-54-014[4] | 932 - High Vol. Restaurant | 0.64 | 3,000 | 127.15 | 381.45 |
| 1-4F | 022-54-011[4] | 820 - Shopping Center | 1.31 | 8,000 | 42.70 | 341.60 |
| 1-4G | 022-54-010 | 931 - Quality Restaurant | 1.03 | 7,476 | 89.95 | 672.47 |
| 2-1 | 022-53-001 | 931 - Quality Restaurant | 0.75 | 6,500 | 89.95 | 584.68 |
| 2-2 | 022-53-002[4] | 820 - Shopping Center | 1.23 | 10,000 | 42.70 | 427.00 |
| 2-3 | 022-53-003[4] | 820 - Shopping Center | 0.76 | 8,000 | 42.70 | 341.60 |
| 2-4 | 022-53-004 | 934 - Fast Food | 0.60 | 2,000 | 496.12 | 992.24 |
| 2-5 | 022-53-005 | 934 - Fast Food | 0.74 | 3,000 | 496.12 | 1,488.36 |
| 2-6 | 022-53-006 | 863 – Elect. Superstore | 1.19 | 51,250 | 45.04 | 2,308.30 |
| 2-7 | 022-53-007 | 820 - Shopping Center | 21.92 | 214,094 | 42.70 | 9,141.81 |
| 3 | 022-29-016 | 815 - Discount Superstore | 14.56 | 125,000 | 50.75 | 6,343.75 |
| 4-1A-1 | 022-56-005 | 714 - Corp Headquarters | 2.03 | 115,753 | 7.98 | 923.71 |
| 4-1A-2 | 022-56-006 | 714 - Corp Headquarters | 2.06 | 174,483 | 7.98 | 1,392.37 |
| 4-1A-3 | 022-56-007 | 714 - Corp Headquarters | 2.07 | 177,483 | 7.98 | 1,416.31 |
| 4-1A-4 | 022-56-008 | Undeveloped | 34.52 | - | - | - |
| 4-1A-5 | 022-56-009 | Parking Lot | 24.32 | - | - | - |
| 4-1B | 022-29-037 | Open Space | 6.00 | - | - | - |
| 5-1A-1 | 022-29-034 | 750 - Office Park | 36.66 | 572,660 | 11.42 | 6,539.78 |
| 5-2A-1 | 022-29-035 | 750 - Office Park | 31.14 | 480,772 | 11.42 | 5,490.42 |
| 5-3A | 022-29-036 | Undeveloped | 35.01 | - | - | - |
| 5-3B-1 | 022-30-037 | Undeveloped | 9.19 | - | - | - |
| 5-3B-2 | 022-30-038 | Undeveloped | 10.00 | - | - | - |
| 5-3B-3 | 022-30-039 | Undeveloped | 5.22 | - | - | - |
| 5-3C | 022-30-035[5] | Pump Station | 0.19 | - | - | 1.00 |
| 5-5A | 022-30-048 | Undeveloped | 9.34 | - | - | - |
| 5-6 | 022-30-041 | Open Space | 1.43 | - | - | - |
| 5-7 | 022-30-049[5] | Sewer Pump Station | 9.16 | - | - | 1.00 |
| **Total Estimated Daily Special Benefit Trips** | | | | | | 47,517.83 |
| Internal Trip Reduction[6] | | | | | | (13,810.00) |
| **Total Special Benefit Trips** | | | | | | **33,707.83** |

(1) Average Trip Rate per Day is from the Institute of Traffic Engineer's, Trip Generation Report.[14]
(2) Average Number of Special Benefit Trips per Day is the Average Trip Rate times each 1,000 square feet of gross leasable area.
(3) Average Number of Special Benefit Trips per Day is the Average Trip Rate times number of hotel rooms for this parcel.
(4) Building Square Feet for this parcel is unavailable at this time. Estimate of square feet was used based on similar building in center.
(5) Pump Station trips are an estimate.
(6) The internal trip rate percentage was calculated by using the NCHRP 684 Internal Rate Capture Estimation Tool.

[14] *Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers*. (2012). Washington, DC: Institute of Transportation Engineers.

# 5. METHOD OF ASSESSMENT

## 5.1. Introduction

The special benefits that accrue to the properties in the District are limited to those properties that abut an improved public street or which have been obligated by issuance of bonds for necessary public improvements (the "Benefitted Parcels"). Other properties in the District receive only a general benefit from the work of the improvements, and there is also some general benefit that accrues to the community as a whole. As outlined in Section 4, the total amount of general benefit from the improvements is determined to be 6.00%.

The Benefitted Parcels receive a special benefit proportionate to their net acreage and thus they are assessed on the basis of total net acreage for all costs associated with the maintenance and installation of the District's improvements, with the following exceptions:

- Of the 9.12 acres of parcel 022-30-049 (sewer pump station), 5.51 acres is the pump station and is not assessable. The remaining 3.61 acres does not benefit from landscaping as much as other Benefitted Parcels because it is dedicated to municipal sanitary sewer and storm facilities use and will not otherwise be developed. Therefore, it is assigned a special benefit equal to 50%.

- Parcel 022-30-035 (storm pump station) does not benefit from landscaping as much as other Benefitted Parcels because it is dedicated to municipal sanitary sewer and storm facilities use and will not otherwise be developed. Therefore, it is assigned a special benefit equal to 50%.

- Parcel 022-29-037 and parcel 022-30-041 are dedicated to open space and therefore do not receive special benefit from the maintenance and improvements.

## 5.2. Method of Assessment Spread

The amount of assessment levied on each Benefitted Parcel in the District, for Fiscal Year 2015/16, is $0.02464 per square foot. The assessment rate was determined by taking the Fiscal Year 2015/16 Net Amount to be assessed divided by the total net square footage of the District.

The maximum assessment rate for Fiscal Year 2015/16 is estimated to be $0.0404. Each year the maximum assessment rate per square foot shall be increased by the percentage change from April 1st of the prior fiscal year to April 1st of the current year in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and U.S. City Average, San Francisco-Oakland-San Jose.

## 5.3. Maximum Assessment Rates

The following table provides the maximum assessment rate for Fiscal Year 2001/02 through the current fiscal year:

| Historical Maximum Rates | | | | |
|---|---|---|---|---|
| Fiscal Year | CPI | % Increase[1] | Range | |
| 2001/02 | 189.1 | N/A | $0.0120 | $0.0300 |
| 2002/03 | 193.0 | 2.06% | 0.0122 | 0.0306 |
| 2003/04 | 197.3 | 2.23% | 0.0125 | 0.0313 |
| 2004/05 | 198.3 | 0.51% | 0.0126 | 0.0315 |
| 2005/06 | 202.5 | 2.12% | 0.0129 | 0.0321 |
| 2006/07 | 208.9 | 3.16% | 0.0133 | 0.0331 |
| 2007/08 | 215.842 | 3.32% | 0.0137 | 0.0342 |
| 2008/09 | 222.074 | 2.89% | 0.0141 | 0.0352 |
| 2009/10 | 223.854 | 0.80% | 0.0142 | 0.0355 |
| 2010/11 | 227.697 | 1.72% | 0.0144 | 0.0361 |
| 2011/12 | 234.121 | 2.82% | 0.0149 | 0.0371 |
| 2012/13 | 238.985 | 2.08% | 0.0152 | 0.0379 |
| 2013/14 | 244.675 | 2.38% | 0.0155 | 0.0388 |
| 2014/15 | 251.495 | 2.79% | 0.0160 | 0.0399 |
| 2015/16[2] | 254.910 | 1.36% | 0.0162 | 0.0404 |

(1) Percentage increase from April 1 of the prior year to April 1 of the current year in the US Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and US City Average, San Francisco-Oakland-San Jose.

(2) The April 1, 2015 CPI was not available at the time of writing of this Report. The Fiscal Year 2015/16 CPI increase was estimated by using the February 2015 CPI.

## 5.4. Appeals

Any property owner who feels that the amount of their assessment is in error as a result of incorrect information being used to apply the foregoing method of spread, may file an appeal with the Finance Director of the City. Any such appeal is limited to correction of an assessment during the current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Finance Director shall promptly review the information provided by the property owner and if he/she finds that the assessment should be modified, he/she shall have the authority to make the appropriate changes in the assessment roll. If any such changes are provided after the assessment roll has been filed with the County for collection, the Finance Director is authorized to refund to the property owner the amount of any approved reduction.

# 6. ASSESSMENT DIAGRAM

The following page provides a copy of the assessment diagram of the District.

An assessment was levied by the City Council of the City of Milpitas, County of Santa Clara, State of California on the lots, pieces and parcels of land shown on this assessment diagram. Said assessment was levied on the 3rd day of June 2014 ; said assessment diagram and the, assessment roll were recorded in the Office of the Superintendent of Streets of said City on the 3rd day of June 2014. Reference is made to the assessment roll recorded in the Office of the Superintendent of Streets for the exact amount of each assessment levied against each parcel of land shown on this assessment diagram.

Mary Lavelle
City Clerk of the City of Milpitas

Filed in the Office of the City Clerk of the City of Milpitas, County of Santa Clara, State of California this 20th day of May 2014

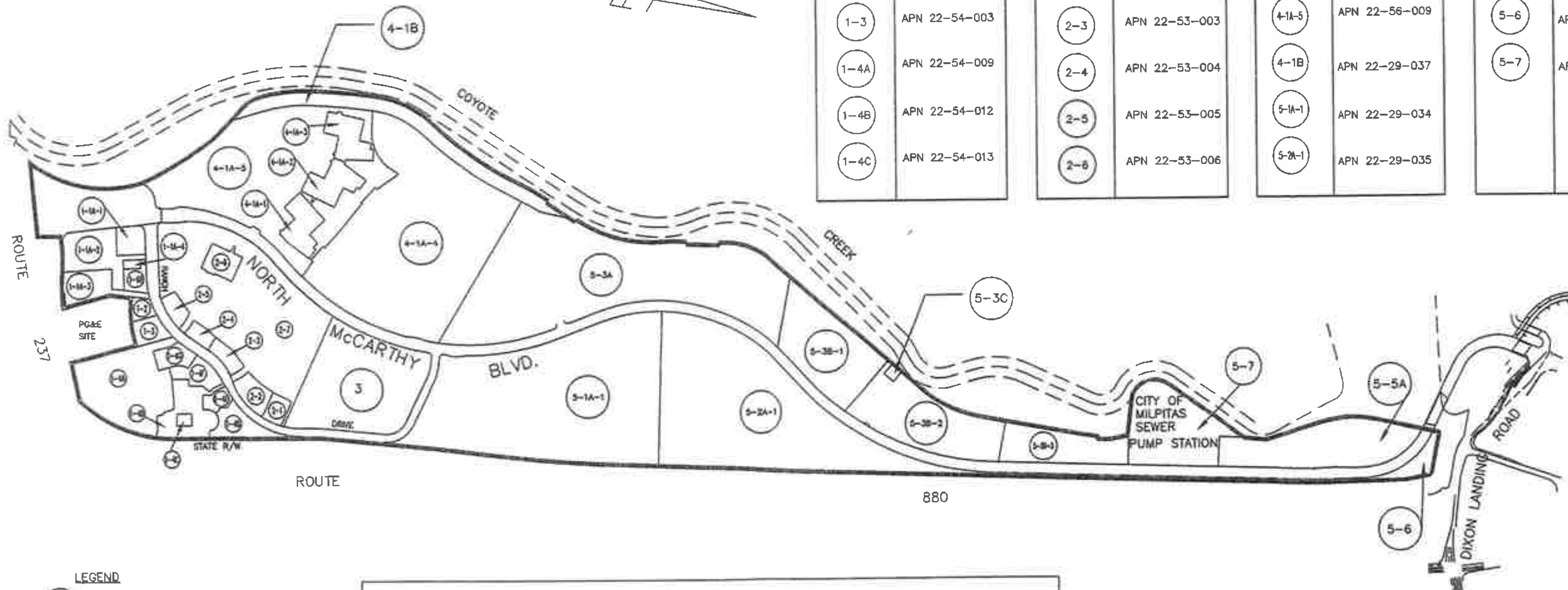
Mary Lavelle
City Clerk of the City of Milpitas

Recorded in the Office of the Superintendent of Streets of the City of Milpitas, County of Santa Clara, State of California, this 3rd day of June 2014.

Superintendent of Streets
City of Milpitas

Figure 1

| ASSESSMENT NO. | ASSESSOR'S PARCEL NO. |
|---|---|
| 1-1A-1 | APN 22-54-016 |
| 1-1A-2 | APN 22-54-017 |
| 1-1A-3 | APN 22-54-018 |
| 1-1A-4 | APN 22-54-019 |
| 1-1B | APN 22-54-008 |
| 1-2 | APN 22-54-002 |
| 1-3 | APN 22-54-003 |
| 1-4A | APN 22-54-009 |
| 1-4B | APN 22-54-012 |
| 1-4C | APN 22-54-013 |
| 1-4D | APN 22-54-015 |
| 1-4E | APN 22-54-014 |
| 1-4F | APN 22-54-011 |
| 1-4G | APN 22-54-010 |
| 2-1 | APN 22-53-001 |
| 2-2 | APN 22-53-002 |
| 2-3 | APN 22-53-003 |
| 2-4 | APN 22-53-004 |
| 2-5 | APN 22-53-005 |
| 2-6 | APN 22-53-006 |
| 2-7 | APN 22-53-007 |
| 3 | APN 22-29-016 |
| 4-1A-1 | APN 22-56-005 |
| 4-1A-2 | APN 22-56-006 |
| 4-1A-3 | APN 22-56-007 |
| 4-1A-4 | APN 22-56-008 |
| 4-1A-5 | APN 22-56-009 |
| 4-1B | APN 22-29-037 |
| 5-1A-1 | APN 22-29-034 |
| 5-2A-1 | APN 22-29-035 |
| 5-3A | APN 22-29-036 |
| 5-3B-1 | APN 22-30-037 |
| 5-3B-2 | APN 22-30-038 |
| 5-3B-3 | APN 22-30-039 |
| 5-3C | APN 22-30-035 |
| 5-5A | APN 22-30-048 |
| 5-6 | APN 22-30-041 |
| 5-7 | APN 22-30-049 |



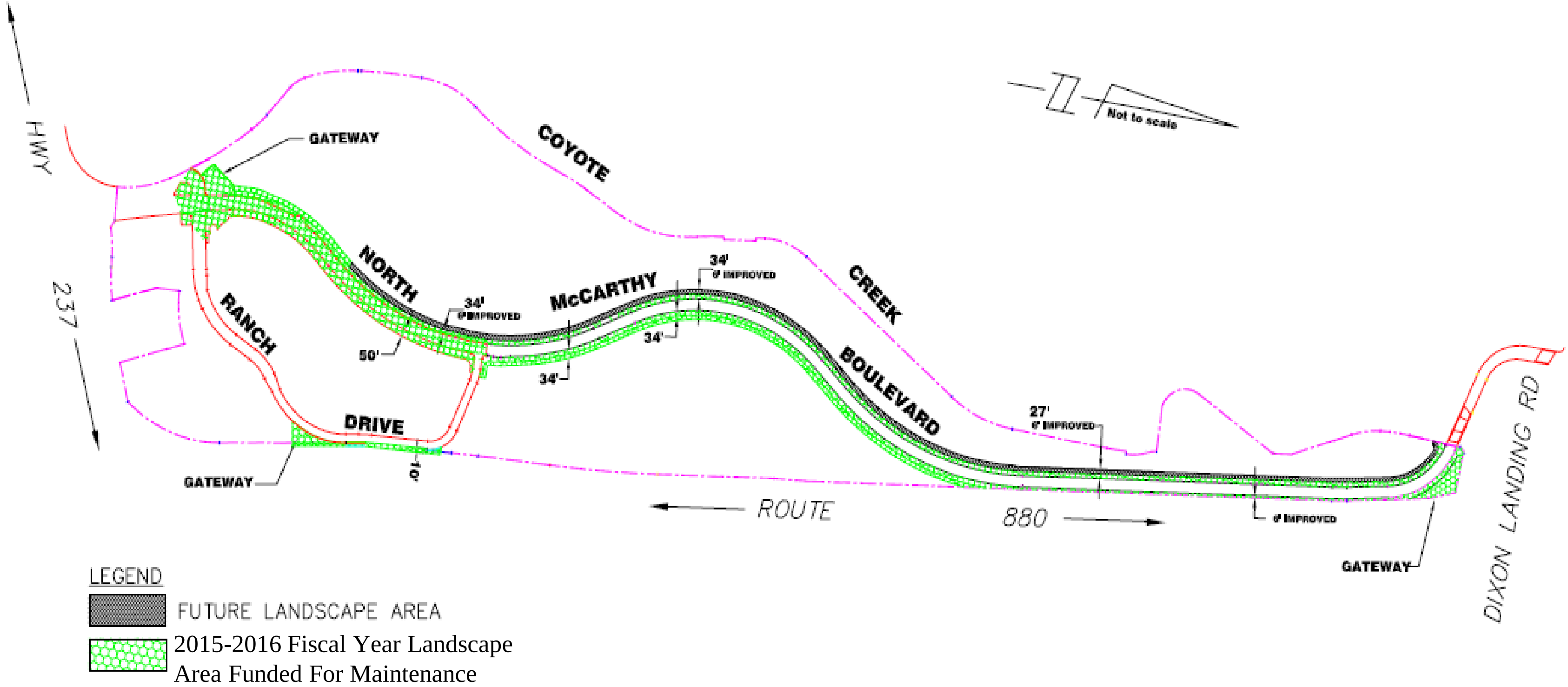

LEGEND
6 ASSESSMENT NO.
BOUNDARY DISTRICT
ASSESSMENT LIMIT

PART F - ASSESSMENT DIAGRAM
LANDSCAPING & LIGHTING & MAINTENANCE
ASSESSMENT DISTRICT NO. 95-1
OF
CITY OF MILPITAS
COUNTY OF SANTA CLARA - STATE OF CALIFORNIA

Note:
Reference is hereby made to the maps and deeds of record in the Office of the Assessorof the County of Santa Clara for a detailed description of the lines and dimensions of anyparcels shown hereon. Those maps shall govern for all details concerning the lines anddimension of such parcels. Each parcel is identified in said maps by its distinctive Assessors Parcel Number.

1
1

# Landscape and Lighting Maintenance Assessment District NO. 95-1




PART G – VICINITY MAP

LANDSCAPING & LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95–1

CITY OF MILPITAS

COUNTY OF SANTA CLARA –STATE OF CALIFORNIA

# 7. ASSESSMENT ROLL

The assessment roll is a listing of the proposed assessment for Fiscal Year 2015/16 apportioned to each lot or parcel, as shown on the last equalized roll of the Assessor of the County of Santa Clara. The following page shows the assessment roll for Fiscal Year 2015/16.

# City of Milpitas
## Landscaping and Lighting Maintenance Assessment District
## No. 95-1
### Fiscal Year 2015/16 Assessment Roll

| APN | Assessment ID | Owner | Net Square Feet | Amount |
|---|---|---|---|---|
| 022-54-016 | 1-1A-1 | HOURET FAM LP | 46,173.60 | $1,137.54 |
| 022-54-017 | 1-1A-2 | BRE SELECT HOTELS PROPERTIES LLC | 143,312.40 | 3,530.67 |
| 022-54-018 | 1-1A-3 | LL MILPITAS, L P | 100,623.60 | 2,478.98 |
| 022-54-019 | 1-1A-4 | IN N OUT BURGERS | 8,276.40 | 203.90 |
| 022-54-008 | 1-1B | IN N OUT BURGERS | 33,976.80 | 837.06 |
| 022-54-002 | 1-2 | FIRST CREEKSIDE ASSOC | 25,264.80 | 622.43 |
| 022-54-003 | 1-3 | LOO YUK LUN TRUSTEE & ET AL & LOO MEI FONG | 44,431.20 | 1,094.62 |
| 022-54-009 | 1-4A | MCCARTHY SHOPPING CTR LP | 368,953.20 | 9,089.60 |
| 022-54-012 | 1-4B | F&M SORCI LAND COMPANY INC | 131,551.20 | 3,240.92 |
| 022-54-013 | 1-4C | F&M SORCI LAND COMPANY INC | 10,018.80 | 246.82 |
| 022-54-015 | 1-4D | PACIFIC MERITAGE LLC | 77,536.80 | 1,910.21 |
| 022-54-014 | 1-4E | J N C INTERNATIONAL ENTPRS LLC | 27,878.40 | 686.82 |
| 022-54-011 | 1-4F | FIRST CREEKSIDE ASSOC | 57,063.60 | 1,405.83 |
| 022-54-010 | 1-4G | H & Y NORTHERN CALIFORNIA LLC | 44,866.80 | 1,105.35 |
| 022-53-001 | 2-1 | HAM JAYNE Y | 32,670.00 | 804.86 |
| 022-53-002 | 2-2 | TMS MCCARTHY LP | 53,578.80 | 1,319.98 |
| 022-53-003 | 2-3 | TMS MCCARTHY LP | 33,105.60 | 815.60 |
| 022-53-004 | 2-4 | HSC ASSOCIATES LP | 26,136.00 | 643.89 |
| 022-53-005 | 2-5 | HSC ASSOCIATES LP | 32,234.40 | 794.13 |
| 022-53-006 | 2-6 | TMS MCCARTHY LP | 51,836.40 | 1,277.05 |
| 022-53-007 | 2-7 | TMS MCCARTHY LP | 954,835.20 | 23,523.49 |
| 022-29-016 | 3 | WAL-MART REAL ESTATE | 634,233.60 | 15,625.09 |
| 022-56-005 | 4-1A-1 | BRE/MILPITAS LLC | 88,426.80 | 2,178.50 |
| 022-56-006 | 4-1A-2 | BRE/MILPITAS LLC | 89,733.60 | 2,210.69 |
| 022-56-007 | 4-1A-3 | BRE/MILPITAS LLC | 90,169.20 | 2,221.42 |
| 022-56-008 | 4-1A-4 | BRE/MILPITAS LLC | 1,503,691.20 | 37,045.21 |
| 022-56-009 | 4-1A-5 | BRE/MILPITAS LLC | 1,059,379.20 | 26,099.06 |
| 022-29-037 | 4-1B (Open Space) | CITY OF SAN JOSE | 0.00 | 0.00 |
| 022-29-034 | 5-1A-1 | CALIFORNIA DIVERSIFIED LLC | 1,596,909.60 | 39,341.76 |
| 022-29-035 | 5-2A-1 | CALIFORNIA DIVERSIFIED LLC | 1,356,458.40 | 33,417.96 |
| 022-29-036 | 5-3A | MCCARTHY RANCH LP | 1,525,035.60 | 37,571.05 |
| 022-30-037 | 5-3B-1 | MCCARTHY RANCH LP | 400,316.40 | 9,862.27 |
| 022-30-038 | 5-3B-2 | NEW TREND TECH INC | 435,600.00 | 10,731.52 |
| 022-30-039 | 5-3B-3 | MCCARTHY RANCH LP | 227,383.20 | 5,601.85 |
| 022-30-035 | 5-3C (Storm Pump Station) | MILPITAS CITY OF | 4,138.20 | 101.95 |
| 022-30-048 | 5-5A | MCCARTHY RANCH LP | 406,850.40 | 10,023.24 |
| 022-30-041 | 5-6 (Open Space) | CITY OF MILPITAS | 0.00 | 0.00 |
| 022-30-049 | 5-7 (Sewer Pump Station) | MILPITAS SANITARY DIST | 78,625.80 | 1,937.04 |
| | | | 11,801,275.20 | $290,738.36 |

**RESOLUTION NO. _____** **2A**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING ANNUAL ENGINEER'S REPORT, CONFIRMING DIAGRAM AND ASSESSMENT AND ORDERING LEVY OF ASSESSMENT FOR FISCAL YEAR 2015-2016 FOR LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 98-1**

**WHEREAS**, by its Resolution No. 8471, A Resolution Directing Preparation of Annual Engineer's Report for the City of Milpitas Maintenance Assessment District No. 98-1 (the "Maintenance District"), this Council ordered the Engineer to make and file a report in writing in accordance with and pursuant to the Landscaping and Lighting Act of 1972; and

**WHEREAS**, the report was duly made and filed with the City Clerk and duly considered by this Council and found to be sufficient in every particular, whereupon it was determined that the report should stand as the Annual Engineer's Report for all subsequent proceedings under and pursuant to the aforesaid Resolution, and that June 2, 2015, at the hour of 7:00 p.m., or shortly thereafter in the Milpitas City Council Chambers, 455 East Calaveras Boulevard, Milpitas, California, were appointed as the time and place for a hearing by this Council on the question of the levy of the proposed assessment, notice of which hearing was given as required by law; and

**WHEREAS**, at the appointed time and place the hearing was duly and regularly held, and all persons interested desiring to be heard were given an opportunity to be heard, and all matters and things pertaining to the levy were fully heard and considered by this Council, and all oral statements and all written protests or communications were duly heard, considered and overruled, and this Council thereby acquired jurisdiction to order the levy and the confirmation of the diagram and assessment prepared by and made a part of the Annual Engineer's Report to pay the costs and expenses thereof.

**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 public interest, convenience and necessity require that the levy be made.

3. The Maintenance District benefited by the improvements and assessed to pay the costs and expenses thereof, and the exterior boundaries thereof, are as shown by a map thereof filed in the office of the City Clerk, which map is made a part hereof by reference thereto.

4. The Engineer's Report as a whole and each part thereof are finally approved and confirmed, including:

   (a) The Engineer's estimate of the itemized and total costs and expenses of maintaining the improvements and of the incidental expenses in connection therewith; and

   (b) The diagram showing the assessment district, plans and specifications for the improvements to be maintained and the boundaries and dimensions of the respective lots and parcels of land within the Maintenance District; and

   (c) The assessment of the total amount of the costs and expenses of the proposed maintenance of the improvements upon the several lots and parcels of land in the Maintenance District in proportion to the estimated benefits to be received by such lots and parcels, respectively, from the maintenance, and of the expenses incidental thereto.

5. Final adoption and approval of the Engineer's Report as a whole, and of the plans and specifications, estimate of the costs and expenses, the diagram and the assessment, as contained in the report, as

hereinabove determined and ordered, is intended to and shall refer and apply to the report, or any portion thereof as amended, modified, or revised or corrected by, or pursuant to and in accordance with, any resolution or order, if any, heretofore duly adopted or made by this Council.

6. The assessment to pay the costs and expenses of the maintenance of the improvements for fiscal year 2015-2016 is hereby levied. For further particulars pursuant to the provisions of the Landscaping and Lighting Act of 1972, reference is hereby made to the Resolution Directing Preparation of Annual Report.

7. Based on the oral and documentary evidence, including the Annual Engineer's Report, offered and received at the hearing, this Council expressly finds and determines (a) that each of the several lots and parcels of land will be specially benefited by the maintenance of the improvements at least in the amount, if not more than the amount, of the assessment apportioned against the lots and parcels of land, respectively, and (b) that there is substantial evidence to support, and the weight of the evidence preponderates in favor of, the aforesaid finding and determination as to special benefits.

8. Immediately upon the adoption of this Resolution, but in no event later than the third Monday in August following such adoption, the City Clerk shall file a certified copy of the diagram and assessment and a certified copy of this Resolution with the Auditor of the County of Santa Clara. Upon such filing, the County Auditor shall enter on the County assessment roll opposite each lot or parcel of land the amount of assessment thereupon as shown in the assessment. The assessments shall be collected at the same time and in the same manner as County taxes are collected, and all laws providing for the collection and enforcement of County taxes shall apply to the collection and enforcement of the assessments. After collection by the County, the net amount of the assessments, after deduction of any compensation due the County for collection, shall be paid to the Director of Financial Services/Treasurer of the City.

9. Upon receipt of moneys representing assessments collected by the County, the Director of Financial Services/Treasurer shall deposit the moneys in the City Treasury to the credit of the improvement fund previously established under the distinctive designation of the Maintenance District. Moneys in the improvement fund shall be expended only for the maintenance, servicing, construction or installation of the improvements.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

| ATTEST: | APPROVED: |
| --- | --- |
| _________________________________ | _________________________________ |
| Mary Lavelle, City Clerk | Jose S. Esteves, Mayor |

APPROVED AS TO FORM:

_________________________________
Michael J. Ogaz, City Attorney

2B

City of Milpitas

# Landscaping and Lighting Maintenance Assessment District No. 98-1

Fiscal Year 2015/16 Annual Report

**Main Office**
32605 Temecula Parkway, Suite 100
Temecula, CA 92592
Toll free: 800.676.7516 Fax: 951.296.1998

**Regional Office**
870 Market Street, Suite 1223
San Francisco, CA 94102
Toll free: 800.434.8349 Fax: 415.391.8439

helping communities fund tomorrow

# CITY OF MILPITAS
# LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1


**455 East Calaveras Boulevard**
**Milpitas, California 95035**
**Phone - (408) 586-3000**


---

**CITY COUNCIL**

Jose Esteves, Mayor

Carmen Montano, Vice-Mayor

Debbie Indihar Giordano, Council Member

Garry Barbadillo, Council Member

Marsha Grilli, Council Member

**CITY STAFF**

Steve Erickson, CIP Manager

Steve Machida, Acting Public Works Director/City Engineer

**NBS**

Tim Seufert, Client Services Director

Tiffany Ellis, Senior Consultant

Jason Roth, Consultant

## *TABLE OF CONTENTS*

# 1. ENGINEER'S LETTER

**WHEREAS,** in 1998 the City Council of the City of Milpitas (the "City"), State of California, under the Landscaping and Lighting Act of 1972 (the "Act"), created the City of Milpitas Maintenance Assessment District No. 98-1 (the "District"). The District was formed in order to provide for the continued maintenance, operation, and administration of various improvements within the boundaries of the District.

**WHEREAS,** the City Council has directed NBS to prepare and file a report for Fiscal Year 2015/16 in accordance with Chapter 1, Article 4 of the Act presenting plans and specifications describing the general nature, location and extent of the improvements to be maintained; an estimate of the costs to maintain, operate, and service the improvements for the District for the referenced fiscal year; a diagram for the District showing the area and properties to be assessed; and an assessment of the estimated costs to maintain and service the improvements, stating the net amount to be assessed upon all assessable lots or parcels within the District in proportion to the special benefit received.

**NOW THEREFORE,** the following assessments have been levied in accordance with the assessment methodology adopted and approved by the City Council at the time of District formation, and are made to cover the portion of the estimated costs of maintenance, operation, and servicing of the improvements, to be paid by the assessable real property within the District in proportion to the special benefit received:

| District | Parcels | 2015/16 Maximum Assessment Rate per Lot (1) | 2015/16 Actual Assessment Rate per Lot | Net Amount to be Assessed |
|---|---|---|---|---|
| LLMAD 98-1 | 98 | $417.67 | $388.2966 | $38,053.07 |

(1) The April 1, 2015 CPI was not available at the time of writing of this Report. The Fiscal Year 2015 CPI increase was estimated by using the February 2015/16 CPI.

(2) Amounts placed on the tax roll include the 1% Santa Clara County Collection Fee.

I identified all parcels which will have a special benefit conferred upon them from the improvements described in District's Plans and Specifications section of this Engineer's Report (the "Benefited Parcels"). For particulars as to the identification of said parcels, reference is made to the Assessment Diagram, a copy is on file in the office of the City Clerk.

I have assessed the costs and expenses of the improvements upon the Benefited Parcels. In making such assessment:

a. The proportionate special benefit derived by each Benefited Parcel from the improvements was determined in relationship to the entirety of the maintenance costs of the improvements;

b. No assessment has been imposed on any Benefited Parcel which exceeds the reasonable cost of the proportional special benefit conferred on such parcel from the improvements; and

c. Any general benefits from the improvements have been separated from the special benefits and only special benefits have been assessed.

I, the undersigned, respectfully submit the enclosed Engineer's Report and, to the best of my knowledge, information and belief, the Engineer's Report, Assessments, and the Assessment Diagrams herein have been prepared and computed in accordance with the order of the City Council of the City of Milpitas, the Act, and Article XIIID.

____________________________________

Brian K. Thomas, PE
Assessment Engineer

# 2. PLANS AND SPECIFICATIONS

The District provides for the continued administration, maintenance, operation, and servicing of various improvements located within the public right-of-way and dedicated easements within the boundaries of the District.

## 2.1. Location Of Improvements

The District is located in the City of Milpitas, bounded on the east by Sinclair Frontage Road, on the west by Berryessa Creek, and on the north by Los Coches Street. The improvements maintained include public landscaping and irrigation improvements, including jogging paths, planter walls, grass berms, and ornamental planting, which are primarily situated within the public rights-of-way and dedicated public by easements within the District.

## 2.2. Landscaping Improvements

The landscaping and irrigation improvements were installed within the District in order to enhance the overall visual appearance for adjacent parcels. The improvements consist of the maintenance and operation of any or all public landscaping and irrigation improvements adjacent to curbs, including asphalt concrete jogging paths, planter walls, grass berms, and appurtenant irrigation systems; ornamental planting including lawns, shrubs, and trees; including necessary repairs, replacements, water, electric current, spraying, care, supervision, debris removal and all other items of work necessary and incidental for proper maintenance and operation thereof. The landscaping and irrigation improvements are collectively referred to as “landscaping improvements”. All such work will be performed in the following areas:

<u>Berryessa Creek</u>

A strip of land approximately 510 feet long varying in width from 35 feet to 60 feet along the east bank of Berryessa Creek adjacent to Tract 9018. The improvements include an asphalt concrete jogging path, exercise equipment, planting, and irrigation.

<u>Los Coches Creek</u>

1. A strip of land 812 feet long, 14 feet in width along the south bank of Los Coches Creek adjacent to Tract 9018. The improvements include an asphalt concrete jogging path, exercise equipment, planting, and irrigation.
2. A strip of land 5.5 feet wide within the Los Coches Street right-of-way between the back of sidewalk and the right-of-way along the south side of Los Coches Street between Berryessa Creek and Sinclair Frontage Rd. The improvements include planting and irrigation.

## 2.3. Overhead

In addition to the hard costs of maintaining the improvements mentioned above, the City will incur costs for staff time and expenses related to the management and maintenance of the improvements within the District. Staff time includes oversight and coordination of both City and contractor provided services, annual tax roll preparation, and addressing property owner questions and concerns. These activities are directly related to the maintenance of the improvements, and without them the improvements could not be efficiently completed or properly maintained on an ongoing basis.

# 3. ESTIMATE OF COSTS

The estimated costs of maintenance and servicing of the improvements as described in the Plans and Specifications are summarized below. Each year, as part of the assessment district levy calculation process, the costs and expenses are reviewed and the annual costs are projected for the following fiscal year.

## 3.1. District Budget

The Fiscal Year 2015/16 estimated cost budget for the maintenance and servicing of the improvements is as follows:

| Description | Budget 2015/2016 |
|---|---|
| Personnel (Eng) | $0 |
| Landscape Maintenance Contract Services[1] | 12,965 |
| Capital Equipment | 0 |
| Supplies | 500 |
| Utilities (Water, Electricity) | 13,200 |
| Capital Improvement Program | 0 |
| **Maintenance Costs** | **$26,665** |
| | |
| NBS Financial | $6,375 |
| NBS Report Review | 10,950 |
| City Staff District Admin | 3,000 |
| County Auditor-Controller Fee[2] | 381 |
| **District Specific Costs** | **$20,706** |
| | |
| Total District Costs | **$47,371** |
| General Benefit Contribution[3] | (8,479) |
| Operating Reserve Contribution | (838) |
| **Net Amount to be Assessed** | **$38,053** |
| | |
| **Total District Lots** | 98 |
| **Rate per Lot[4]** | **$388.2966** |
| **Maximum Rate Per Lot – 2015/16[5]** | **$417.67** |

(1) For 2015/16 Landscape Maintenance Contract Services includes TerraCare $12,965.
(2) County Auditor-Controller Fee is currently 1% of the total levy submittal.
(3) General Benefit Contribution is not applied to District Specific Costs as these are special benefits to the District.
(4) The Rate per Lot equals the Net Amount to be Assessed / Total District Lots.
(5) The actual Rate per Lot levied cannot exceed the Maximum Rate per Lot. The April, 2015 CPI was not available at the time of writing of this Report. The Fiscal Year 2015/16 CPI increase was estimated by using the February 2015 CPI.

### Operating Reserve

It is the intent of the City to maintain an operating reserve which shall not exceed the estimated costs of maintenance and servicing of the improvements prior to December 10 of the fiscal year, or when the City expects to receive its apportionment of special assessments and tax collections from the County, whichever is later. The operating reserve balance information for the District is as follows:

| | |
|---|---|
| Estimated Fiscal Year Ending 6/30/2015 Operating Reserve Cash Balance | $21,000 |
| Operating Reserve Collection – Fiscal Year 2015/16 | (838) |
| **Estimated Fiscal Year Ending 6/30/2016 Operating Reserve Cash Balance** | **$20,162** |

# 4. SPECIAL AND GENERAL BENEFIT

The improvements defined in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits are described below.

## 4.1. Introduction

Pursuant to Article XIIID, all parcels that receive a special benefit conferred upon them as a result of the installation, implementation and maintenance of the improvements, services and activities shall be identified, and the proportionate special benefit derived by each identified parcel shall be determined in relationship to the entire costs of the installation, implementation and maintenance of the improvements, services and activities.

Article XIIID, Section 4(a) of the California Constitution limits the amount of any assessment to the proportional special benefit conferred on the property. Proposition 218 requires that the City separate the general benefit from special benefit, so that only special benefit may be assessed to properties within the District. Furthermore, Article XIIID also provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment.

## 4.2. Special Benefits Identified

The improvements described in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits conferred to property within the District can be grouped into two primary benefit categories: aesthetic benefit and safety benefit. The two district benefit categories are further expanded upon below.

- **Improved Aesthetics:** The aesthetic benefit relates to the increase in the overall aesthetics as a result of the ongoing maintenance, servicing and operation of the improvements within the District. Street landscaping improvements improve the livability, commercial activity, appearance and desirability for properties within the District. Regular maintenance ensures that the improvements do not reach a state of deterioration or disrepair so as to be materially detrimental to properties adjacent to or in close proximity to the improvements. The overall appeal of the District is enhanced when improvements are in place and kept in a healthy and satisfactory condition. Conversely, appeal decreases when improvements are not well-maintained, unsafe, or destroyed by the elements or vandalism. Streetscapes have a significant effect on how people view and interact with their community[1]. With streetscapes that are safe and inviting, people are more likely to walk, which can help reduce automobile traffic, improve public health, stimulate local economic activity and attract residents and visitors to the community[2].

- **Increased Safety:** Well maintained areas mitigate crime, especially vandalism, and enhance pedestrian safety. A recent study found that after landscape improvements were installed, there was a 46% decrease in crash rates across urban arterial and highway sites and a second study reviewed found a 5% to 20% reduction in mid-block crashes after trees and planters in urban arterial roads were put in place. In addition, there is less graffiti, vandalism, and littering in outdoor spaces with natural landscapes than in comparable plant-less spaces[3]. The Victoria

[1] Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities.* Retrieved from http://www.vtpi.org/tdm/tdm97.htm.
[2] Ibid.
[3] Wolf, Kathleen L. (2010). *Safe Streets – A Literature Review. In: Green Cities: Good Health* (www.greenhealth.washington.edu). *College of the Environment, University of Washington.*

Transport Policy Institute has found that streetscapes reduce traffic speeds and when combined with improved pedestrian crossing conditions can significantly reduce collisions[4].

## 4.3. General Benefits Identified

Section 4 of Article XIIID of the California Constitution provides that once a local agency which proposes to impose assessments on property has identified those parcels that will have special benefits conferred upon them and upon which an assessment will be imposed, the local agency must next "separate the general benefits from the special benefits conferred," and only the special benefits can be included in the amount of the assessments imposed.

General benefit is an overall and similar benefit to the public at large resulting from the maintenance of the District's improvements provided by the assessments levied. The improvements to be maintained by the District are located within the District boundaries only. There will be no District maintenance activities provided for improvements located outside of the District boundaries.

The ongoing maintenance of the District improvements will provide aesthetic and safety benefits to the property within the District. However, it is recognized that the ongoing District maintenance activities will also provide a level of benefit to some property within proximity to the District, as well as individuals passing through. Therefore, the general benefit created as a result of the District maintenance activities has been considered.

## 4.4. Quantification of Benefit

As a result of the maintenance and operation of the improvements, there will be a level of general benefit to people that do not live in or intend to conduct business within the District. In order for property within the District to be assessed only for that portion of special benefits received from the district's maintenance activities, general benefits provided by the ongoing maintenance of the improvements needs to be quantified. The amount of general benefit that is provided from the District's maintenance activities cannot be funded via property owners' assessments.

The landscaping improvements are primarily located along Los Coches Street and Sinclair Frontage Road and within the subdivision along Los Coches Creek and Berryessa Creek. A portion of the maintained landscaping provides some general benefit to pass-thru traffic. Per the City, there is currently 52,912 square feet of landscaping being maintained.

<u>Los Coches Creek and Berryessa Creek</u>
As result of the District maintenance activities, there will be a level of general benefit to pedestrians and vehicular traffic that are not associated with property in the District. As expressed by the Court in *Beutz v. County of Riverside* (2010), "... *courts of this state have long recognized that virtually all public improvement projects provide general benefits*." A route beginning or ending with a parcel within the District does not include the "general public" for purposes of determining general benefit. The landscaping improvements along the south side of Los Coches Creek and Berryessa Creek are local in nature, however even though they are intended primarily for localized access, there is some portion of pedestrian traffic that may not be accessing the adjacent properties. The landscaping improvements are located adjacent to the backyard of homes, and access is only available by walking or bicycling. There is no vehicular access to these improvements.

The Summary of Travel Trends, 2009 National Household Travel Survey (NHTS) prepared by the U.S. Department of Transportation Federal Highway Administration analyzed the number of person trips by various modes of transportations such as private vehicle, transit, walking or some other means of transportation. According to the Pacific Division data extracted from the 2009 NHTS database, of the

[4] Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities.* Retrieved from http://www.vtpi.org/tdm/tdm97.htm.

annual 181,703 (in millions) total person trips, 21,252 (in millions) or 11.70% of those person trips were made by using walking as their mode of transportation, and 2,066 (in millions) or 1.14% of those person trips were made by bicycling[5].

According to the U.S. Census Bureau (2010), the average household size in the City is 3.34 persons[6]. Based on this average household size, and considering there are 98 residential units within the District, there are approximately 327 people residing within the District boundaries. There are an estimated 163 residential units in close proximity, but outside of the District boundaries. Based on the City's average household size, there are approximately 544 persons residing outside of the District boundaries, but have access to the landscaping improvements.

| Community | Estimated Number Of Residential Units | Estimated Number of Persons[1] |
|---|---|---|
| District | 98 | 327 |
| Sundrop subdivision | 83 | 277 |
| Sinclair Renaissance subdivision | 80 | 267 |
| **Total Residential Population** | **261** | **871** |

(1) U.S. Census Bureau (2010) average household size in the City is 3.34 persons.[7]

In order to determine the estimated total number of persons who are within close proximity to the landscaping improvements, and would utilize walking or bicycling as their mode of transportation, we applied the 12.84% (11.70% walking, 1.14% bicycling) of person trips reported from the NHTS Pacific Division study, to the total nearby residential population (871). There are approximately 112 people within close proximity of the District that utilize walking or bicycling as their mode of transportation.

In order to determine the portion of the 112 persons that reside within the District, we applied the 2009 NHTS walking trip percentage (12.84%) to the District population (327). Approximately 42 people within the District boundaries use walking or bicycling as their primary mode of transportation. Therefore, the total surrounding neighborhood area population, located outside of the District boundaries, but in close proximity the landscaping improvements, that uses walking or bicycling as their primary mode of transportation is estimated to be 70 people.

| Community | Estimated Number of Persons |
|---|---|
| District | 42 |
| Sundrop subdivision | 36 |
| Sinclair Renaissance subdivision | 34 |
| **Walking or Bicycling Population** | **112** |

In order to obtain a better picture of the overall level of general benefit provided by the landscaping improvements, the pedestrian traffic that utilizes walking or bicycling as the mode of transportation that will seek out and use the District improvements, but live outside of the District, must be considered. The 2009 NHTS further details the purposes of the reported walking (21,252 in millions) and bicycling (2,066 in millions) trips; based on the property types people entering the District would most likely do so for social or recreational activities.

---

[5] U.S Department of Transportation. Federal Highway Administration. (2011). *Summary of Travel Trends: 2009 National Household Travel Survey.* (Report No. FHWA-PL-11-022). Retrieved from http://nhts.ornl.gov

[6] U.S. Census Bureau. (2010). *Profile of General Population and Housing Characteristics: 2010, 2010 Demographic Profile Data. Milpitas, C.A.* Retrieved March 23, 2015, http://quickf acts.census.gov/qf d/states/06/0647766.html

[7] Ibid.

The following details the number of walking and bicycling trips, based on the 2009 NHTS study, for each of the activities that are the most likely reasons people outside of the District would use the landscaping improvements:

| Trip Purpose | Number of Walking/Bicycling Trips (in millions) |
|---|---|
| Social/Recreational | 6,442 |
| **Total** | **6,442** |

Of the total number of walking and bicycling trips reported, 6,442 (in millions) or 27.63% are for purposes that persons outside of the District may use the landscaping improvements. Applying this percentage (27.63%) to the number of people walking or bicycling as their mode of transportation and that reside outside of the District (70), there are approximately 19 people (general benefit) that may use the landscaping improvements, but do not reside within the District. Taking the 19 people that may walk or bicycle, but reside outside of the District, divided by total residential population with access to the landscaping improvements (871), the estimated percentage of persons, engaging in what is considered general benefit because they do not reside within the District, represents 2.21%.

Los Coches Street and Sinclair Frontage Road

The City does not have a study showing traffic volume along Los Coches Street and Sinclair Frontage Road along the District boundaries. The portion of the maintained landscaping that is located along Los Coches Street and Sinclair Frontage Road provides some general benefit to pass-through traffic. Before the determination and allocation of the percentage of special and general benefit for the District can be made, the estimated pass-through traffic must be computed. The pass-through trips are vehicles driving along the maintained streets within the District for a portion of their trips, but not living or conducting business in the District and benefiting from the landscaping improvements in place.

The Sundrop and Sinclair Renaissance residential communities are located directly across the street and next to the District, and vehicles entering and/or exiting these communities in all likelihood are passing by a portion of the landscaping improvements for a portion of their trip. In lieu of having a study that identifies the pass-through traffic, the estimated number of trips generated for each community has been calculated based on the number of units and average number of trips per dwelling unit.

| Community | Number of Residential Units[1] | Estimated Number of Daily Vehicle Trips[2] | % of Total Daily Vehicle Trips |
|---|---|---|---|
| District | 98 | 933.0 | 44.34% |
| Sundrop subdivision | 83 | 790.2 | 37.56% |
| Sinclair Renaissance subdivision | 80 | 380.8 | 18.10% |
| **Total** | **261** | **2,104.0** | **100.00%** |

(1) Number of Residential Units is from the City's Approved Projects map.[8]

(2) Per the ITE Trip Generation Report a single family residence generates an average of 9.52 trips per dwelling unit.[9]

(3) Number of daily trips has been reduced by 50% to account for vehicles entering and exiting the community from the opposite direction on Sinclair Frontage Road, and not driving along the portion of Los Coches Street and Sinclair Frontage Road with landscaping improvements maintained by the District.

As detailed above, based on the average number of daily vehicle trips generated for the communities in close proximity to the District, 1,171 (55.66%) are generated by residential units located outside of the District (general benefit).

[8] City of Milpitas. (2013). Approved Development Projects. Retrieved from http://www.ci.milpitas.ca.gov/government/planning/proj_approved.asp

[9] *Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers*. (2012). Washington, DC: Institute of Transportation Engineers.

All Locations and Landscaping Improvements – Residential Pass-thru Benefit

The general benefit percentages determined in the previous sections for Los Coches Creek and Berryessa Creek (2.21%) and Los Coches Street and Sinclair Frontage Road (55.66%) were then applied to each corresponding location with landscaping improvements. The landscaping square footage being maintained by the District was provided by the City's Public Works Department. The general benefit percentage for each street type was multiplied by the total square footage being maintained for such street. The general benefit square footage was summed for all street segments and divided into the total square footage of all landscaping maintenance. The result is the combined general benefit percentage. The following table details this calculation.

| Street Name | Total Square Footage | General Benefit Percentage | General Benefit Square Footage |
|---|---|---|---|
| Los Coches Creek | 4,572 | 2.21% | 101 |
| Berryessa Creek | 21,025 | 2.21% | 465 |
| Los Coches Street | 24,747 | 55.66% | 13,773 |
| Sinclair Frontage | 2,568 | 55.66% | 1,429 |
| **Totals:** | **52,912** | | **15,768** |
| | **Landscaping General Benefit** | | **29.80%** |

Based on the above calculations, the general benefit portion of the improved aesthetics and increased safety resulting from the landscaping improvements is estimated to be 29.80%.

Public at Large General Benefit

Given the location and nature of the improvements, it is very unlikely the public at large would seek out or use the landscaping improvements within the District. In addition, there are more direct routes to access the industrial complexes/businesses located to the south of the District than the 2 lane Los Coches Street and Sinclair Frontage Road. Nevertheless, it is perceivable that members of the public at large may pass-thru a portion of the landscaping improvements, even if it's lost or leisure traffic. As such, general benefit of 2.00% has been assigned for the landscaping improvements to the public at large.

**Collective District-Wide General Benefit**

Since the District is comprised of improved aesthetics and increased safety benefits resulting from the collective landscaping improvements, the activity of both pedestrians and vehicles, and the public at large must be addressed in a collective form rather than independently. The sum of the calculated general benefits is the total general benefit related to all pass-thru traffic. This general benefit result is provided in the table below:

| | |
|---|---|
| Residential Pass-thru General Benefit | 29.80% |
| Public at Large General Benefit | 2.00% |
| **Total General Benefit** | **31.80%** |

The general benefit, which is the percentage of the total budget that must be funded through sources other than assessments, is 31.80%. The special benefit then, which is the percentage of the budget that may be funded by assessments, is 68.20%.

# 5. METHOD OF ASSESSMENT

## 5.1. Method of Assessment Spread

All parcels in the District on which residential dwelling will be constructed specially benefit from the improvements to an equivalent extent. These parcels are therefore assessed on a per lot basis for the maintenance and operation of the District, including incidentals and appurtenances, and will include all the costs of maintenance and/or operating the improvements. As outlined in Section 4, the total amount of general benefit from the improvements is determined to be 31.80%.

The maximum assessment rate for Fiscal Year 2015/16 is estimated to be $417.67. The April 2015 CPI was not available at the time of writing of this Report. The Fiscal Year 2015/16 CPI increase and maximum rate per lot was estimated using the February 2015 CPI.

Each year the maximum assessment rate shall be increased by the percentage change from April 1st of the prior fiscal year to April 1st of the current year by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and U.S. City Average, San Francisco-Oakland-San Jose.

## 5.2. Maximum Assessment Rates

The following table provides the maximum assessment rate for Fiscal Year 1998/99 through the current fiscal year:

| ***Historical Maximum Rates*** | | | |
|---|---|---|---|
| **Fiscal Year** | **CPI** | **% Increase[1]** | **Maximum Rate** |
| 1998/99 | 164.6 | N/A | $269.70 |
| 1999/00 | 172.2 | 4.62% | 282.153 |
| 2000/01 | 178.7 | 3.77% | 292.803 |
| 2001/02 | 189.1 | 5.82% | 309.844 |
| 2002/03 | 193.0 | 2.06% | 316.234 |
| 2003/04 | 197.3 | 2.23% | 323.280 |
| 2004/05 | 198.3 | 0.51% | 324.918 |
| 2005/06 | 202.5 | 2.12% | 331.800 |
| 2006/07 | 208.9 | 3.16% | 342.286 |
| 2007/08 | 215.842 | 3.32% | 353.661 |
| 2008/09 | 222.074 | 2.89% | 363.872 |
| 2009/10 | 223.854 | 0.80% | 366.789 |
| 2010/11 | 227.697 | 1.72% | 373.086 |
| 2011/12 | 234.121 | 2.82% | 383.611 |
| 2012/13 | 238.985 | 2.08% | 391.581 |
| 2013/14 | 244.675 | 2.38% | 400.904 |
| 2014/15 | 251.495 | 2.79% | 412.079 |
| 2015/16[2] | 254.910 | 1.36% | 417.675 |

(1) Percentage increase from April 1 of the prior year to April 1 of the current year in the US Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and US City Average, San Francisco-Oakland-San Jose.

(2) The April 2015 CPI was not available at the time of writing of this Report. The Fiscal Year 2015/16 CPI increase was estimated by using the February 2015 CPI.

## *5.3. Appeals*

Any property owner who feels that the amount of their assessment is in error as a result of incorrect information being used to apply the foregoing method of spread, may file an appeal with the Finance Director of the City. Any such appeal is limited to correction of an assessment during the current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Finance Director shall promptly review the information provided by the property owner and if he/she finds that the assessment should be modified, he/she shall have the authority to make the appropriate changes in the assessment roll. If any such changes are provided after the assessment roll has been filed with the County for collection, the Finance Director is authorized to refund to the property owner the amount of any approved reduction.

# 6. ASSESSMENT DIAGRAM

The following page provides a copy of the assessment diagram of the District.

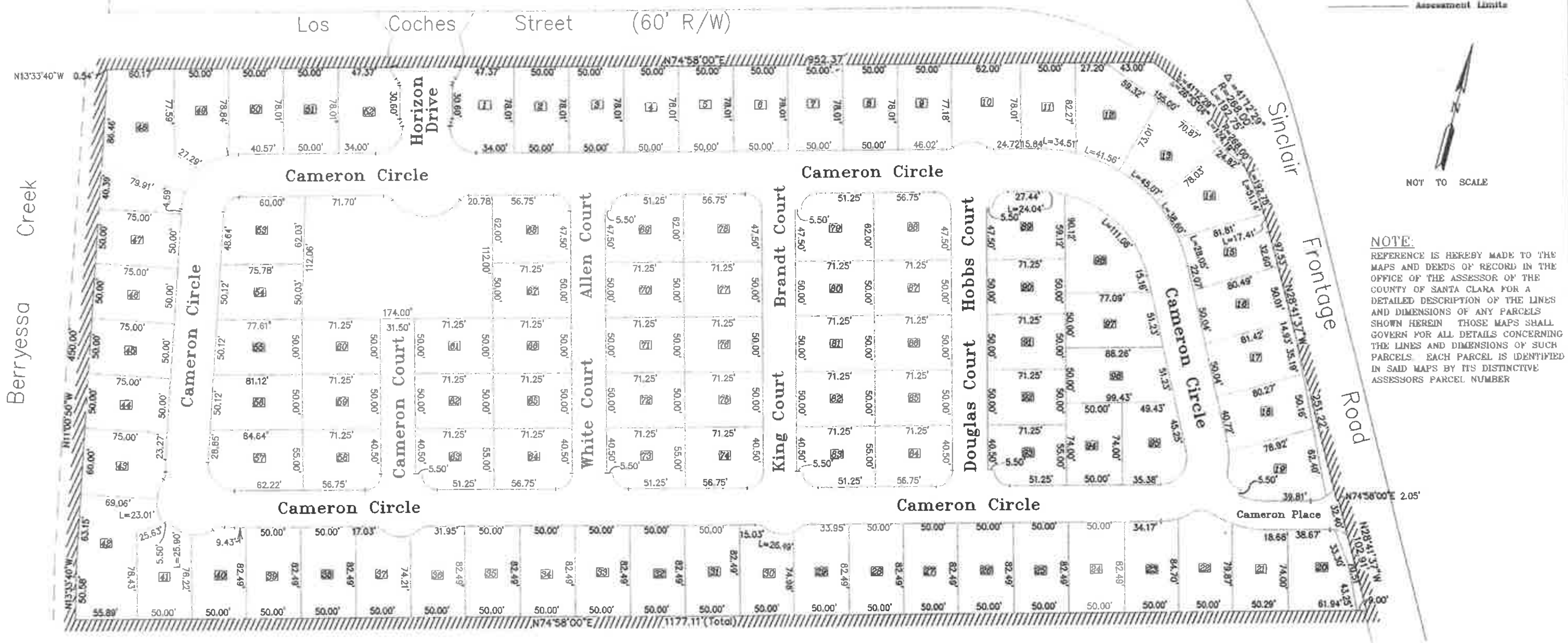
| ASSESSMENT DIAGRAM NUMBER | ASSESSMENT PARCEL NUMBER |
|---|---|
| 1 | 86-48-001 |
| 2 | 86-48-002 |
| 3 | 86-48-003 |
| 4 | 86-48-004 |
| 5 | 86-48-005 |
| 6 | 86-48-006 |
| 7 | 86-48-007 |
| 8 | 86-48-008 |
| 9 | 86-48-009 |
| 10 | 86-48-010 |
| 11 | 86-48-011 |
| 12 | 86-48-012 |
| 13 | 86-48-013 |
| 14 | 86-48-014 |
| 15 | 86-48-015 |
| 16 | 86-48-016 |
| 17 | 86-48-017 |
| 18 | 86-48-018 |
| 19 | 86-48-019 |
| 20 | 86-48-020 |
| 21 | 86-48-021 |
| 22 | 86-48-022 |
| 23 | 86-48-023 |
| 24 | 86-48-024 |
| 25 | 86-48-025 |
| 26 | 86-48-026 |
| 27 | 86-48-027 |
| 28 | 86-48-028 |
| 29 | 86-48-029 |
| 30 | 86-48-030 |
| 31 | 86-48-031 |
| 32 | 86-48-032 |
| 33 | 86-48-033 |
| 34 | 86-48-034 |
| 35 | 86-48-035 |
| 36 | 86-48-036 |
| 37 | 86-48-037 |
| 38 | 86-48-038 |
| 39 | 86-48-039 |
| 40 | 86-48-040 |
| 41 | 86-48-041 |
| 42 | 86-48-042 |
| 43 | 86-48-043 |
| 44 | 86-48-044 |
| 45 | 86-48-045 |
| 46 | 86-48-046 |
| 47 | 86-48-047 |
| 48 | 86-48-048 |
| 49 | 86-48-049 |
| 50 | 86-48-050 |
| 51 | 86-48-051 |
| 52 | 86-48-052 |
| 53 | 86-48-053 |
| 54 | 86-48-054 |
| 55 | 86-48-055 |
| 56 | 86-48-056 |
| 57 | 86-48-057 |
| 58 | 86-48-058 |
| 59 | 86-48-059 |
| 60 | 86-48-060 |
| 61 | 86-48-061 |
| 62 | 86-48-062 |
| 63 | 86-48-063 |
| 64 | 86-48-064 |
| 65 | 86-48-065 |
| 66 | 86-48-066 |
| 67 | 86-48-067 |
| 68 | 86-48-068 |
| 69 | 86-48-069 |
| 70 | 86-48-070 |
| 71 | 86-48-071 |
| 72 | 86-48-072 |
| 73 | 86-48-073 |
| 74 | 86-42-074 |
| 75 | 86-48-075 |
| 76 | 86-48-076 |
| 77 | 86-48-077 |
| 78 | 86-48-078 |
| 79 | 86-48-079 |
| 80 | 86-48-080 |
| 81 | 86-48-081 |
| 82 | 86-48-082 |
| 83 | 86-48-083 |
| 84 | 86-48-084 |
| 85 | 86-48-085 |
| 86 | 86-48-086 |
| 87 | 86-48-087 |
| 88 | 86-48-088 |
| 89 | 86-48-089 |
| 90 | 86-48-090 |
| 91 | 86-48-091 |
| 92 | 86-48-092 |
| 93 | 86-48-093 |
| 94 | 86-48-094 |
| 95 | 86-48-095 |
| 96 | 86-48-096 |
| 97 | 86-48-097 |
| 98 | 86-48-098 |

LEGEND

[13] Assessment Parcel Numbers

////////////////// District Boundary

———— Assessment Limits




NOTE:
REFERENCE IS HEREBY MADE TO THE MAPS AND DEEDS OF RECORD IN THE OFFICE OF THE ASSESSOR OF THE COUNTY OF SANTA CLARA FOR A DETAILED DESCRIPTION OF THE LINES AND DIMENSIONS OF ANY PARCELS SHOWN HEREIN. THOSE MAPS SHALL GOVERN FOR ALL DETAILS CONCERNING THE LINES AND DIMENSIONS OF SUCH PARCELS. EACH PARCEL IS IDENTIFIED IN SAID MAPS BY ITS DISTINCTIVE ASSESSORS PARCEL NUMBER

An assessment was levied by the City Council of the City of Milpitas, County of Santa Clara, State of California on the lots, pieces and parcels of land shown on this assessment diagram. Said assessment was levied on the 3rd day of June 2014, said assessment diagram and the assessment roll were recorded in the Office of the Superintendent of Streets of said City on the 3rd day of June 2014. Reference is made to the assessment roll recorded in the Office of the Superintendent of Streets for the exact amount of each assessment levied against each parcel of land shown on this assessment diagram.

Mary Lavelle
City Clerk of the City of Milpitas

Filed in the Office of the City Clerk of the City of Milpitas, County of Santa Clara, State of California this 20th day of May 2014.

Mary Lavelle
City Clerk of the City of Milpitas

Recorded in the Office of the Superintendent of Streets of the City of Milpitas, County of Santa Clara, State of California, this 3rd day of June 2014.

Superintendent of Streets
City of Milpitas

Figure 1

PART F

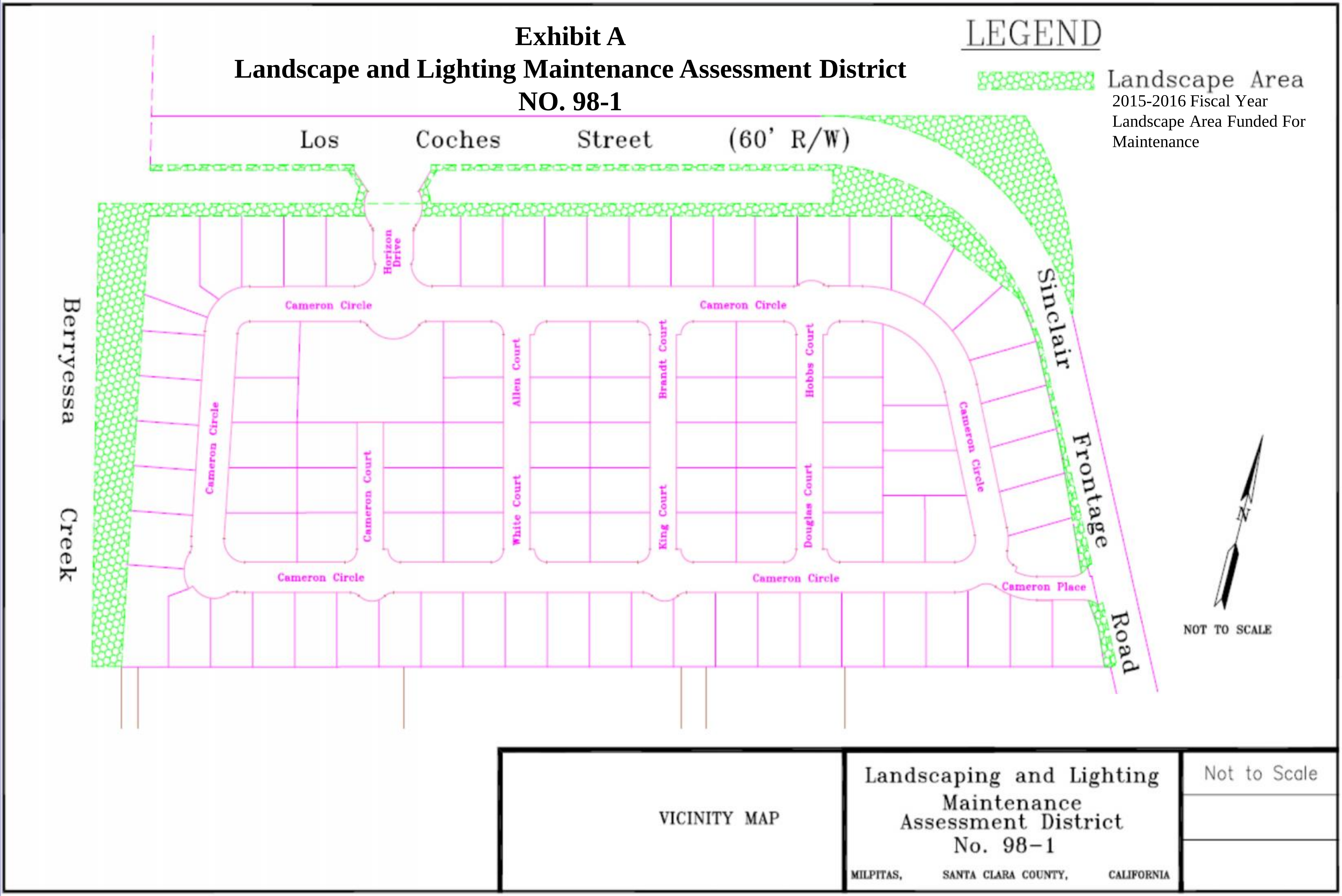
ASSESSMENT DIAGRAM
LANDSCAPING AND LIGHTING
MAINTENANCE ASSESSMENT DISTRICT
NO. 98-1

MILPITAS CALIFORNIA

June 2011

1/1

**Exhibit A**
**Landscape and Lighting Maintenance Assessment District**
**NO. 98-1**



# 7. ASSESSMENT ROLL

The assessment roll is a listing of the proposed assessment for Fiscal Year 2015/16 apportioned to each lot or parcel, as shown on the last equalized roll of the Assessor of the County of Santa Clara. The following page shows the assessment roll for Fiscal Year 2015/16.

# City of Milpitas
## Landscaping and Lighting Maintenance Assessment District
## No. 98-1
### Fiscal Year 2015/16 Assessment Roll

| APN | Assessment ID | Owner | Amount |
|---|---|---|---|
| 086-48-001 | 1 | HUYNH CONNIE C AND NGUYEN HUNG | $388.2966 |
| 086-48-002 | 2 | DAM MIKE MINH CHI AND JAMIE LO TRUSTEE | 388.2966 |
| 086-48-003 | 3 | SANTIAGO SIMON AND RACHEL | 388.2966 |
| 086-48-004 | 4 | GDK ENTERPRISE LLC | 388.2966 |
| 086-48-005 | 5 | NOGUERA ALEX D AND GUTIERREZ-NOGUERA MARLI | 388.2966 |
| 086-48-006 | 6 | KEMPIS BENJAMIN S AND EVANGELINE Q TRUSTEE | 388.2966 |
| 086-48-007 | 7 | SHILEDAR ADITYA AND BADHE PRIYA P | 388.2966 |
| 086-48-008 | 8 | XU JIANZHONG AND WANG XIAOMIN ET AL | 388.2966 |
| 086-48-009 | 9 | LAM TUAN AND NGUYEN YEN N | 388.2966 |
| 086-48-010 | 10 | VU JOSEPH ANH AND TRAN YENLINH T | 388.2966 |
| 086-48-011 | 11 | GUTIERREZ ALEJANDRO J AND SOLITA A | 388.2966 |
| 086-48-012 | 12 | ECAL ERLINDA E AND GEORGE E | 388.2966 |
| 086-48-013 | 13 | DELA CRUZ DALE E AND JEANETTE M | 388.2966 |
| 086-48-014 | 14 | RAMOS DIEGO AND SANDY | 388.2966 |
| 086-48-015 | 15 | NGUYEN TUNG K AND LAC V | 388.2966 |
| 086-48-016 | 16 | LADLE GORDON B AND MARICAR C | 388.2966 |
| 086-48-017 | 17 | JACKSON PAUL K AND BRITTON-JACKSON VIVIAN | 388.2966 |
| 086-48-018 | 18 | CAO MICHAEL T AND TAM VUONG | 388.2966 |
| 086-48-019 | 19 | MIGUELINO OSCAR T JR AND JUDY Y | 388.2966 |
| 086-48-020 | 20 | NGUYEN HA AND BUI THUAN | 388.2966 |
| 086-48-021 | 21 | TRAN KENNETH L AND LENA L TRUSTEE | 388.2966 |
| 086-48-022 | 22 | AGBUYA ALBERT P AND AMORFINA G TRUSTEE | 388.2966 |
| 086-48-023 | 23 | PATEL BHUSHAN AND AARTI M | 388.2966 |
| 086-48-024 | 24 | KOH CHENG-CHEE ET AL | 388.2966 |
| 086-48-025 | 25 | GADIGE BHASKAR V AND HIMABINDU | 388.2966 |
| 086-48-026 | 26 | AGARWAL SHIV AND TAYAL MANISHA | 388.2966 |
| 086-48-027 | 27 | NARVAEZ HOWARD M TRUSTEE & ET AL | 388.2966 |
| 086-48-028 | 28 | LEUNG PAUL K AND NANCY M | 388.2966 |
| 086-48-029 | 29 | TRAN MICHAEL AND TIFFANY | 388.2966 |
| 086-48-030 | 30 | WU XILONG AND YU ZHEBIN TRUSTEE | 388.2966 |
| 086-48-031 | 31 | WONG IRENE TRUSTEE | 388.2966 |
| 086-48-032 | 32 | QU HUA AND WANG KAILIN | 388.2966 |
| 086-48-033 | 33 | RAGHUNATHA SWAROOP AND PADUBIDRI LALITHA BH | 388.2966 |
| 086-48-034 | 34 | GUDURI VINOD AND LAKMA SHAILAJA | 388.2966 |
| 086-48-035 | 35 | YAU TIMOTHEUS AND PEGGY | 388.2966 |
| 086-48-036 | 36 | VOLADRI RAMA K AND GURJAL MANI R | 388.2966 |
| 086-48-037 | 37 | CHU WEI MUN | 388.2966 |
| 086-48-038 | 38 | AGRAWAL RAKESH AND KANSAL ESHA | 388.2966 |
| 086-48-039 | 39 | DUNN ERIC J AND BUI TRANG THI THUY | 388.2966 |
| 086-48-040 | 40 | MUNE DEREK AND LEE TERRI L | 388.2966 |
| 086-48-041 | 41 | AGGARWAL RAHUL AND SHELLY | 388.2966 |
| 086-48-042 | 42 | RAO QIZHOU AND SHAN MENGWEN | 388.2966 |
| 086-48-043 | 43 | LOW NEE-LOONG AND OH BEE-BEE | 388.2966 |
| 086-48-044 | 44 | VOGETY RAMANAGOPAL V AND VEDANTAM KANYALAKS | 388.2966 |
| 086-48-045 | 45 | MAI KENNY CHI AND PAULINE | 388.2966 |
| 086-48-046 | 46 | DO KHAN AND NGUYEN THU K TRUSTEE | 388.2966 |
| 086-48-047 | 47 | TSAI JULIE Y ET AL | 388.2966 |
| 086-48-048 | 48 | GDK ENTERPRISES LLC | 388.2966 |
| 086-48-049 | 49 | PEI NICHOLAS | 388.2966 |
| 086-48-050 | 50 | WANG RONG AND GAO YUJIE | 388.2966 |
| 086-48-051 | 51 | LY PETER T | 388.2966 |
| 086-48-052 | 52 | WONG JAMES | 388.2966 |
| 086-48-053 | 53 | FANG XIONG AND WANG QING | 388.2966 |
| 086-48-054 | 54 | LAN DI AND CAO RONG | 388.2966 |
| 086-48-055 | 55 | LAM RONNY AND JULIE TRAN | 388.2966 |
| 086-48-056 | 56 | ZHOU GUO QUAN AND LIU XIN | 388.2966 |
| 086-48-057 | 57 | LI HONG AND TU MINGHU | 388.2966 |
| 086-48-058 | 58 | DUGYALA ANURADHA | 388.2966 |

# City of Milpitas

## Landscaping and Lighting Maintenance Assessment District
## No. 98-1
## Fiscal Year 2015/16 Assessment Roll

| APN | Assessment ID | Owner | Amount |
|---|---|---|---|
| 086-48-059 | 59 | AU JONSON C AND OR SOPHIA YUK YU | 388.2966 |
| 086-48-060 | 60 | WONG CARMEN ET AL | 388.2966 |
| 086-48-061 | 61 | BASANI SHAILESH AND SUPRIYA | 388.2966 |
| 086-48-062 | 62 | LEE ANDREW AND LIU LISA | 388.2966 |
| 086-48-063 | 63 | AZALI ALBERTUS H AND TUNGGAL WENDA TRUSTEE | 388.2966 |
| 086-48-064 | 64 | NIGAM AJAY AND ANJULA TRUSTEE | 388.2966 |
| 086-48-065 | 65 | KOMATSU HIROYUKI AND MIKA | 388.2966 |
| 086-48-066 | 66 | NAIR SEEMA | 388.2966 |
| 086-48-067 | 67 | BIALA CHARITO M TRUSTEE & ET AL | 388.2966 |
| 086-48-068 | 68 | NITAFAN DEMETRIO B AND CECILIA C | 388.2966 |
| 086-48-069 | 69 | NGUYEN TANYA VINH ET AL | 388.2966 |
| 086-48-070 | 70 | HUYNH QUANG AND VO JASMINE TRUSTEE | 388.2966 |
| 086-48-071 | 71 | PATEL GITA V TRUSTEE | 388.2966 |
| 086-48-072 | 72 | FENG HAIJUN AND ZHONG WEIHONG | 388.2966 |
| 086-48-073 | 73 | XUE WEI AND SUN LI | 388.2966 |
| 086-48-074 | 74 | OO JUSTIN THANT HSIN | 388.2966 |
| 086-48-075 | 75 | PRABHU VIVEK R AND SUNITA TEJWANI TRUSTEE | 388.2966 |
| 086-48-076 | 76 | HSIAO JEFF C AND NGUYEN ANGELA T | 388.2966 |
| 086-48-077 | 77 | CHIN MICHAEL AND MARY TRUSTEE | 388.2966 |
| 086-48-078 | 78 | TRUONG PHILLIP TRUSTEE | 388.2966 |
| 086-48-079 | 79 | XIONG XIANG D AND YEE VICKY TRUSTEE & ET AL | 388.2966 |
| 086-48-080 | 80 | EDUSADA ROMEO D AND EMMA R | 388.2966 |
| 086-48-081 | 81 | ARUNACHALAM SARAVANAN AND KRISHNAMOORTHY SA | 388.2966 |
| 086-48-082 | 82 | LI GANG AND MA NAN | 388.2966 |
| 086-48-083 | 83 | BUKIN KONSTANTIN V AND HSIEH PING | 388.2966 |
| 086-48-084 | 84 | DESAI RAJENDRA J AND PRATIMA R | 388.2966 |
| 086-48-085 | 85 | ZHAO QIANG JIMMY AND YUO JENNY BIN | 388.2966 |
| 086-48-086 | 86 | HUANG DEZHONG | 388.2966 |
| 086-48-087 | 87 | PIERCE BRAD A AND KOH CHENG-CHEE TRUSTEE | 388.2966 |
| 086-48-088 | 88 | AHUJA SUMEET AND RUCHI | 388.2966 |
| 086-48-089 | 89 | DEVADAS MANJUNATH AND KARVETI HEMALATHA | 388.2966 |
| 086-48-090 | 90 | LIEU TONY AND TIFFANY | 388.2966 |
| 086-48-091 | 91 | HO HOWARD AND LUU IVY TRUSTEE | 388.2966 |
| 086-48-092 | 92 | LIM PERRY F AND DIXIE M TRUSTEE | 388.2966 |
| 086-48-093 | 93 | LU COURTNIE | 388.2966 |
| 086-48-094 | 94 | QUANG TONY D | 388.2966 |
| 086-48-095 | 95 | SINGLA SANJEEV K AND ANITA | 388.2966 |
| 086-48-096 | 96 | PAL SHIRISH C AND DAS SUJATA S | 388.2966 |
| 086-48-097 | 97 | ANNADATA ANIL K AND VEEPURI SRAVANTHI | 388.2966 |
| 086-48-098 | 98 | ONG PHILIP J JR AND UYEN T | 388.2966 |
| | | | **$38,053.07** |

**RESOLUTION NO._______**

# RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE ISSUANCE OF THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY MULTIFAMILY HOUSING REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $45,000,000 FOR THE PURPOSE OF REFINANCING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF THE CROSSING AT MONTAGUE APARTMENTS AND CERTAIN OTHER MATTERS RELATING THERETO

**WHEREAS**, Montague Parkway Associates, LP, a California limited partnership (the “Borrower”), has requested that the California Municipal Finance Authority (the “Authority”) participate in a plan of financing providing for the issuance of one or more series of revenue bonds issued from time to time, including bonds issued to refund such revenue bonds in one or more series from time to time, in an aggregate principal amount not to exceed $45,000,000 (the “Bonds”) to refinance the acquisition, construction, improvement and equipping of a 468-unit multifamily rental housing project located at 755 E. Capitol Avenue, Milpitas, California, generally known as The Crossing at Montague Apartments (the “Project”), to be owned by the Borrower and operated by Ray Douglas Ann & Patrick, Inc., dba RPM Company, a California corporation; and

**WHEREAS**, pursuant to Section 147(f) of the Internal Revenue Code of 1986 (the “Code”), the issuance of the Bonds by the Authority must be approved by the City of Milpitas (the “City”) because the Project is located within the territorial limits of the City; and

**WHEREAS**, the City Council of the City (the “City Council”) is the elected legislative body of the City and is one of the “applicable elected representatives” required to approve the issuance of the Bonds under Section 147(f) of the Code; and

**WHEREAS**, the Authority has requested that the City Council approve the issuance of the Bonds by the Authority in order to satisfy the public approval requirement of Section 147(f) of the Code and the requirements of Section 4 of the Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004 (the “Agreement”), among certain local agencies, including the City; and

**WHEREAS**, pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the issuance of the Bonds, and now desires to approve the issuance of the Bonds by the Authority; and

**WHEREAS**, the Project was initially financed through the issuance by the City of its Variable Rate Demand Multifamily Housing Revenue Bonds (The Crossing at Montague Apartments) 2000 Series A (the “Original Bonds”) and the refinancing of the Project is to be effected through the issuance of the Bonds to refund the Original Bonds; and

**WHEREAS**, Section 53583 of the Government Code of the State of California (the “Government Code”) authorizes a joint exercise of powers agency, such as the Authority, to issue revenue bonds to refund revenue bonds issued by a member of such joint exercise of powers agency upon the authorization by resolution of such member; and

**WHEREAS**, the Authority has requested that this City Council, by resolution, approve the issuance of the Bonds by the Authority to refund the Original Bonds.

**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 the issuance of the Bonds by the Authority. It is the purpose and intent of the City Council that this Resolution constitute approval of the issuance of the Bonds by the Authority, for the purposes of (a) Section 147(f) of the Code by the applicable elected representative of the

governmental unit having jurisdiction over the area in which the Project is located, in accordance with said Section 147(f), (b) Section 53583 of the Government Code and (c) Section 4 of the Agreement.

3. The issuance of the Bonds shall be subject to the approval of the Authority of all financing documents relating thereto to which the Authority is a party. The City shall have no responsibility or liability whatsoever with respect to the Bonds.

4. The adoption of this Resolution shall not obligate the City or any department thereof to (i) provide any financing to acquire or construct the Project or any refinancing of the Project; (ii) approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the acquisition, construction, rehabilitation, installation or operation of the Project; (iii) make any contribution or advance any funds whatsoever to the Authority; or (iv) take any further action with respect to the Authority or its membership therein.

5. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and the financing transaction approved hereby.

6. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this ___________day of ____________, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: APPROVED:

______________________________
Mary Lavelle, City Clerk

______________________________
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

______________________________
Michael J. Ogaz, City Attorney

*9 City Clerk's Office

MAY 20 2015

RECEIVED

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

*Complete this form and return it to Milpitas City Clerk*

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

Name of Organization: *Hindu Swayamsevak Sangh, Inc, USA*

Is there a Milpitas branch or affiliation? *Yes (not registered with Milpitas City though)*

Mailing Address: *2021 N Milpitas Blvd, 306, Milpitas, CA*

Contact Person: *Ram Chandra Dwivedi* Telephone No. *408-709-9427*

Email Address: ramcdwivedi@gmail.com

What is your request? Donation Amount Requested ____________ OR

Fee requested to be waived (type and $ amount): *Waive the Park rental and other city related fees (Dixon landing Major park, 21st June, 6:30AM -9:30 AM). Per city invoice it is $680.*

Event date(s): *21st June 2015, 7:30 AM – 9:30 AM*

What is the purpose of the event? *International Day of Yoga, Promoting healthy living through Yoga*

How will the Milpitas community benefit from this event?

*Yoga is an ancient and time proven technique which promotes healthy living among the nature and all the living beings. As United Nations has declared 21st June as International Yoga Day which was also co-sponsored by United States along with 174 other nations, it becomes our collective responsibility to promote it amongst our community and let them take benefit of this time proven ancient science. This will help our Milpitas city residents in maintaining a peaceful life in harmony with universe in today's hectic day to day schedule and promoting the healthy living in times where a lot of people are being affected by depression/obesity and other such deceases.*

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

How will the City's contribution (if granted) be recognized in any publicity? *Will be mentioned in the promotional material as supporting organizations.*

Applicant: Ram Chandra Dwivedi

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

Signature of Officer: ____________ Date: 05/20/2015

Print Name & Title: RAM CHANDRA DWIVEDI

IRS Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati OH 45201

In reply refer to: 0248205661
Jan. 26, 2012 LTR 4168C E0
52-1647017 000000 00
00023257
BODC: TE

HINDU SWAYAMSEVAK SANGH U S A INC
% YOGINDER GUPTA
121 HAWTHORNE CT
ROCKAWAY NJ 07866-2252

007627

Employer Identification Number: 52-1647017
Person to Contact: MS. JOHNSON
Toll Free Telephone Number: 1-877-829-5500

Dear TAXPAYER:

This is in response to your Jan. 17, 2012, request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in OCTOBER 1989.

Our records also indicate that you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Please refer to our website www.irs.gov/eo for information regarding filing requirements. Specifically, section 6033(j) of the Code provides that failure to file an annual information return for three consecutive years results in revocation of tax-exempt status as of the filing due date of the third return for organizations required to file. We will publish a list of organizations whose tax-exempt status was revoked under section 6033(j) of the Code on our website beginning in early 2011.

0248205661

Jan. 26, 2012 LTR 4168C E0
52-1647017 000000 00

00023258

HINDU SWAYAMSEVAK SANGH U S A INC
% YOGINDER GUPTA
121 HAWTHORNE CT
ROCKAWAY NJ 07866-2252

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,

S. A. Martin, Operations Manager
Accounts Management Operations

*10A

# City of Milpitas
## 2014-19 CAPITAL IMPROVEMENT PROGRAM

| Category | Project | | Estimate Level |
|---|---|---|---|
| Streets | **4278** | **Disadvantaged Community ADA Ramps** | 1 |

**CONTACT:** Steve Chan [3324]

**PRIORITY:** Improve the Quality of Life

**DESCRIPTION**

This project provides for the design and installation of new or replacement of existing curb ramps with new ADA compliant pedestrian curb ramps at various locations within the City.

**COMMENTS:**

Locations will be chosen based on a graphic section of the City with a population of at least 51 percent having a low-moderate median income.

**Uncommitted Balance as of 6/30/2014:** $0

| ESTIMATED COST | Prior Year | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | Total |
|---|---|---|---|---|---|---|---|
| Design | 0 | 10,000 | 0 | 0 | 0 | 0 | 10,000 |
| Administration | 0 | 10,000 | 0 | 0 | 0 | 0 | 10,000 |
| Inspection | 0 | 5,000 | 0 | 0 | 0 | 0 | 5,000 |
| Improvements | 0 | 75,000 | 0 | 0 | 0 | 0 | 75,000 |
| **Totals** | 0 | 100,000 | 0 | 0 | 0 | 0 | 100,000 |

| FINANCING | Prior Year | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | Total |
|---|---|---|---|---|---|---|---|
| Gas Tax Fund | 0 | 39,352 | 0 | 0 | 0 | 0 | 39,352 |
| Grants/Reimbursement/Develope | 0 | 60,648 | 0 | 0 | 0 | 0 | 60,648 |
| **Totals** | 0 | 100,000 | 0 | 0 | 0 | 0 | 100,000 |

**FINANCE NOTES**

City Council 6/2/15 project created.
$60,648 CDBG grant funding

## Justification Notes

(No Data)

## Project Notes

(No Data)

*10B

City of Milpitas, California

## BUDGET CHANGE FORM

| Type of Change | From | | To | |
|---|---|---|---|---|
| | Account | Amount | Account | Amount |
| Check one:<br>☒ Budget Appropriation<br>☐ Budget Transfer | 221-2909<br>250-3555<br>311-951-4278-15-3832<br>311-951-4278-15-3555 | $39,352<br>$60,648<br>$39,352<br>$60,648 | 221-3939<br>250-551-4208<br>311-951-4278-1-4800<br>311-951-4278-2-4800<br>311-951-4278-4-4800<br>311-951-4278-7-4800 | $39,352<br>$60,648<br>$10,000<br>$10,000<br>$5,000<br>$75,000 |

**Explain the reason for the budget change:**

**Background:** On May 18, 2015, the City received $60,648 in FY 2015-2016 Community Development Block Grant (CDBG) funding for public improvements that benefit low- and moderate-income persons. This proposed project provides for the installation of new ADA compliant pedestrian curb ramps serving various low-to moderate income neighborhoods within the City. Specific locations will be chosen based on areas with a population having at least 51 percent low-moderate area median income. Staff requests the City Council approve the Capital Improvement Program (CIP) project and authorize funding of the project with the necessary budget appropriation.

**Alternative:** A denial of this request may result in relinquishment of $60,648 in CDBG funding.

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

**Fiscal Impact:** A budget appropriation is required for this project. The Engineers Estimate for the work is $100,000. The City received $60,648 in FY 2015-2016 Community Development Block Grant (CDBG) funding for this project. The remaining City matching funds of $39,352 are available from the Gas Tax Fund.

**Recommendation:**
1.Approve new CIP Project – Disadvantaged Community ADA Curb Ramps, Project No. 4278.
2.Approve budget appropriation of $39,352 from the Gas Tax Fund and $60,648 from FY 2015-2016 CDBG Fund to the Disadvantaged Community ADA Curb Ramps, Project No. 4278.

☒ **Check if City Council Approval required.** **Meeting Date:** June 2, 2015

| | | |
|---|---|---|
| **Requested by:** | **Steve Chan, Traffic Engineer** | **Date:** May 21, 2015 |
| **Reviewed by:** | **Finance Director:** [signature] | **Date:** 5/27/15 |
| **Approved by:** | **City Manager:** | **Date:** |
| **Date approved by City Council, if required:** | | **Confirmed by:** |

**FI/24786/V** **Form 30-222 (Rev. 1/92)**

**REGULAR**

**NUMBER:** **65.144**

**TITLE:** **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTER 1.5 TO TITLE II OF THE MILPITAS MUNICIPAL CODE RELATING TO STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of ____________________, upon motion by__________________________ and was adopted (second reading) by the City Council at its meeting of _______________, upon motion by _____________________________. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_________________________________
Mary Lavelle, City Clerk

APPROVED:

___________________________
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_________________________________
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, the City Council of the City of Milpitas seeks to implement AB 2188 (Chapter 521, Statutes 2014) through the creation of an expedited, streamlined permitting process for small residential rooftop solar energy systems; and

**WHEREAS**, the City Council wishes to advance the use of solar energy by all of its citizens, businesses and industries; and

**WHEREAS**, the City Council seeks to meet the climate action goals set by the City of Milpitas and the State of California; and

**WHEREAS**, solar energy creates local jobs and economic opportunity; and

**WHEREAS**, the City Council recognizes that rooftop solar energy provides reliable energy and pricing for its residents and businesses; and

**WHEREAS**, it is in the interest of the health, welfare and safety of the people of Milpitas to provide an expedited permitting process to assure the effective deployment of solar technology.

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

**SECTION 1. RECORD AND BASIS FOR ACTION**

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

**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE**

Title II of the Milpitas Municipal Code is hereby amended to add a new Chapter 1.5 to read as follows:

Chapter 1.5 – STREAMLINED SOLAR PERMITTING

Section 1 – Definitions

II-1.5-1.01 - General

For the purpose of this Chapter, certain terms, phrases, words and their derivatives shall be construed as specified in this Section.

1. A "Solar Energy System" means either of the following:

   a. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

   b. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

2. A "small residential rooftop solar energy system" means all of the following:

a. A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.

b. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City and all State and City health and safety standards.

c. A solar energy system that is installed on a single or duplex family dwelling.

d. A solar panel or module array that does not exceed the maximum legal building height as defined by the City.

3. "Electronic submittal" means the utilization of one or more of the following:

   a. Email;
   b. The Internet;
   c. Facsimile.

4. An "association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

5. A "common interest development" means any of the following:

   a. A community apartment project.
   b. A condominium project.
   c. A planned development.
   d. A stock cooperative.

6. "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

7. "Reasonable restrictions" on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

8. "Restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance" means:

   a. For Water Heater Systems or Solar Swimming Pool Heating Systems: an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars ($1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.

   b. For Photovoltaic Systems: an amount not to exceed one thousand dollars ($1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

Section 2 – Purpose

II-1.5-2.01

The purpose of the Ordinance is to adopt an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 (Chapter 521, Statutes 2014) to achieve timely and cost-effective installations of small residential rooftop solar energy systems. The

Ordinance encourages the use of solar systems by removing unreasonable barriers, minimizing costs to property owners and the City, and expanding the ability of property owners to install solar energy systems. The Ordinance allows the City to achieve these goals while protecting the public health and safety.

Section 3 – Applicability
II-1.5-3.01

This Ordinance applies to the permitting of all small residential rooftop solar energy systems in the City.

II-1.5-3.02
Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Ordinance are not subject to the requirements of this Ordinance unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance or like-kind replacements shall not require a permit.

Section 4 – Solar Energy System Requirements

II-1.5-4.01
All solar energy systems shall meet applicable health and safety standards and requirements imposed by the State and the City.

II-1.5-4.02
Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.

II-1.5-4.03
Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

Section 5 - Duties of Building Department and Building Official

II-1.5-5.01
All documents required for the submission of an expedited solar energy system application shall be made available on the publicly accessible City website.

II-1.5-5.02
Electronic submittal of the required permit application and documents by email, the Internet, or facsimile shall be made available to all small residential rooftop solar energy system permit applicants.

II-1.5-5.03
An applicant’s electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

II-1.5-5.04

The City Building Department shall adopt a standard plan and checklist of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review.

II-1.5-5.05

The small residential rooftop solar system permit process, standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the *California Solar Permitting Guidebook* adopted by the Governor's Office of Planning and Research.

II-1.5-5.06

All fees prescribed for the permitting of small residential rooftop solar energy system must comply with Government Code Section 65850.55, Government Code Section 66015, Government Code Section 66016, and State Health and Safety Code Section 17951.

Section 6 – Permit Review and Inspection Requirements

II-1.5-6.01

The City Building Department shall adopt an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems within 30 days of the adoption on this Ordinance. The Building Department shall issue a building permit or other nondiscretionary permit the same day for over-the-counter applications or within 1-3 business days for electronic applications of receipt of a complete application and meets the requirements of the approved checklist and standard plan. A building official may require an applicant to apply for a use permit if the official finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety. Such decisions may be appealed to the City Planning Commission.

II-1.5-6.02

Review of the application shall be limited to the building official's review of whether the application meets local, state, and federal health and safety requirements.

II-1.5-6.03

If a use permit is required, a building official may deny an application for the use permit if the official makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid, as defined, the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. Such decisions may be appealed to the City Planning Commission.

II-1.5-6.04

Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.

II-1.5-6.05

"A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the

Civil Code defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.

II-1.5-6.06

City shall not condition approval of an application on the approval of an association, as defined in Section 4080 of the Civil Code.

II-1.5-6.07

If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

II-1.5-6.08

Only one inspection shall be required and performed by the City Building Department for small residential rooftop solar energy systems eligible for expedited review.

II-1.5-6.09

The inspection shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within two (2) business days of a request and provide a two (2) hour inspection window.

II-1.5-6.10

If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this Ordinance.

**SECTION 3. SEVERABILITY**

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

**SECTION 4. EFFECTIVE DATE AND POSTING**

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

PLEASE NOTE:

This copy of Ordinance No. 208.51 is a “redlined” version for your convenience.  Text additions are designated by an underline and text deletions are designated with a strikethrough.

**REGULAR**

**NUMBER:** **208.51**

**TITLE:** **AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTION 5.38 OF CHAPTER 2, ARTICLE V, TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO WASTEWATER DISCHARGE PERMITS**

**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 ___________________. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: APPROVED:

_________________________________ __________________________

Mary Lavelle, City Clerk Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_________________________________

Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, the City of Milpitas ("City") contracts for sanitary wastewater treatment at the San Jose/Santa Clara Water Pollution Control Plant ("WPCP") under the 1983 "Master Agreement for Wastewater Treatment between City of San Jose, City of Santa Clara, and City of Milpitas" ("Agreement"); and

**WHEREAS**, the Agreement requires that the City and other tributary agencies adopt, amend, and revise their sanitary ordinances whenever the City of San Jose amends their ordinance to comply with current regulatory requirements established by the WPCP's National Pollutant Discharge Elimination System ("NPDES") permit; and

**WHEREAS**, the City of San Jose revised their sanitary ordinance initiated by a combination of recommendations and audit requirements from the United States Environmental Protection Agency; and

**WHEREAS**, the San Jose City Council adopted revisions to their sanitary ordinance on September 30, 2014, and based on those revisions, the City's sanitary ordinance now requires the same revisions to comply with the Agreement.

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

**SECTION 1. RECORD AND BASIS FOR ACTION**

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

**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE VIII, CHAPTER 2, ARTICLE V, SECTION 5.38**

Title VIII, Chapter 2, Article V, Section 5.38 of the Milpitas Municipal Code is hereby amended to read as follows:

VIII-2-5.38 - No Transfer of Wastewater Discharge Permit Allowed

Wastewater discharge permits are issued to a specific user for a specific operation. A discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation without prior approval of the Director. However, nothing in this Chapter shall be construed to prevent the application of terms and conditions of this Chapter, including enforcement penalties, from applying to a succeeding owner, successor in interest, or other assigns of an existing contract of permit holder.

**SECTION 3. SEVERABILITY**

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

**SECTION 4. EFFECTIVE DATE AND POSTING**

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

**REGULAR**

**NUMBER** **197.13**

**TITLE:** **AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTION 1.00 OF CHAPTER 3, TITLE VI OF THE MILPITAS MUNCIPAL CODE TO SEPARATE ENGINEERING AND PUBLIC WORKS INTO TWO DEPARTMENTS AND ASSIGN THE RECREATION SERVICES DIVISION TO REPORT DIRECTLY TO THE CITY MANAGER DEPARTMENT**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of May 19, 2015, upon motion by Councilmember Giordano, 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:

___________________________________ ___________________________________

Mary Lavelle, City Clerk Jose S. Esteves, Mayor

APPROVED AS TO FORM:

___________________________________

Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, the Milpitas Municipal Code permits the City Manager to assign the work of City government functions to such departments authorized by the City Council; and

**WHEREAS**, it would promote the rational and efficient operation of City government to separate Engineering and Public Works into two departments and assign the Recreation Services Division to directly report to the City Manager Department.

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

**SECTION 1. RECORD AND BASIS FOR ACTION**

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

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

Milpitas Municipal Code Section VI-3-1.00 is hereby amended to read as follows:

**VI-3-1.00 - Establishment of Departments of City**

Pursuant to the provision of Section VI-1-2.08 of the Milpitas Municipal Code, the work of the City government shall be distributed among the following departments of the City:

A. City Manager;
B. City Attorney;
C. Finance;
D. Human Resources;
E. Information Services;
F. Planning and Neighborhood Services;
G. Public Works;
H. Engineering;
I. Police;
J. Fire; and
I Building and Safety.

**SECTION 3. SEVERABILITY**

In the event any section or portion of this Ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

**SECTION 4. EFFECTIVE DATE AND POSTING**

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

**REGULAR**

**NUMBER:** **289**

**TITLE:** **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTERS 4 AND 5 TO TITLE I OF THE MILPITAS MUNICIPAL CODE RELATING TO CONTRACT AND SETTLEMENT AUTHORITY**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of May 19, 2015, upon motion by Councilmember Giordano 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:

________________________________ __________________________

Mary Lavelle, City Clerk Jose S. Esteves, Mayor

APPROVED AS TO FORM:

________________________________

Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, on May 5, 1998, the Milpitas City Council adopted Resolution No. 6765 authorizing the City Attorney to approve settlement of any legal claim against the City of Milpitas in an amount not to exceed Ten Thousand Dollars ($10,000), and the City Manager and City Attorney collectively have authority to approve settlement of any claim against the City of Milpitas in an amount not to exceed Thirty-Five Thousand Dollars ($35,000); and

**WHEREAS**, on August 3, 1999, the City Council adopted Resolution No. 6910 authorizing the Risk Manager of the City of Milpitas to approve settlement of any legal claim against the City of Milpitas in an amount not to exceed Ten Thousand Dollars ($10,000), and the City Manager and City Attorney collectively have authority to approve settlement of any claim against the City of Milpitas in an amount not to exceed Thirty-Five Thousand Dollars ($35,000); and

**WHEREAS**, the Milpitas Purchasing Ordinance codified in Chapter 2 of Title I of the Milpitas Municipal Code sets forth the procurement authority and process for purchase of supplies and services; and

**WHEREAS**, the City of Milpitas desires to add Chapters 4 and 5 to Title I of the Milpitas Municipal Code to codify the aforementioned Resolutions, standard operating procedures, and current practices relating contract and settlement authority.

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

**SECTION 1. RECORD AND BASIS FOR ACTION**

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

**SECTION 2. ADDITION OF CHAPTER 4 TO TITLE I OF THE MILPITAS MUNICIPAL CODE**

Chapter 4 of Title I is added to the Milpitas Municipal Code to read as follows:

**CHAPTER 4 - CONTRACT AUTHORITY**

**Sections:**

**Section 1 - Scope of Contract Authority**

I-4-1.01
The term "Contract," for the purpose of this Chapter, means the following:

a. Agreements for the construction of public works projects;
b. Agreements for the lease or purchase of supplies, materials and equipment;
c. Leases, licenses and other agreements for the use of real property;
d. Agreements for professional services;
e. Agreements for personal services, including agreements with independent contractors and employees;
f. Agreements relating to the grant of funds by the City and to the City; and
g. Temporary construction easements not exceeding one year.

I-4-1.02
The term "Contract," for the purpose of this Chapter, except as provided in Section I-4-2.02, shall not include:

a. Unless specifically authorized under Section I-4-2.02, agreements for the transfer of title to or substantial permanent interest in real property, including:

1. Grant deeds;
2. Quit claim deeds; and
3. Easements.

b. Agreements for the acceptance or donation of personal property, real property, or otherwise, to or by the City.

I-4-1.03
The term "total cumulative monetary value of" means the contract obligations, including all amendments, involving the transfer to or from the City of money, goods, other value, or tangible or intangible personal property or an interest in real property having a dollar value in the amount stated.

**Section 2 - Contract Authority of the City Manager**

I-4-2.01
The City Manager is authorized to enter into and execute for and on behalf of the City of Milpitas, without the prior approval of the City Council, any Contract, for which:

a. Funds have been appropriated; and
b. There is an unexpended and unencumbered balance of such appropriation sufficient to pay the Contract expense; and
c. The total cumulative monetary value of the Contract does not exceed One Hundred Thousand Dollars ($100,000).

The contract authority of the City Manager in this Section does not include the authority to execute any Contracts within the authority of the City Attorney.

I-4-2.02
In addition, the City Manager is authorized to execute for and on behalf of the City of Milpitas a certificate of acceptance of an instrument conveying to the City any interest in real property, where such conveyance is:

a. Of real property, or an interest therein, to be used for a public purpose; and
b. Required as a condition of:
    1. A parcel map or tentative subdivision map approved pursuant to Chapter 1 of Title XI of the Municipal Code; or
    2. A development permit approved pursuant to Chapter 10 of Title XI of the Municipal Code; and
c. The real property has been determined to present no significant toxics liability.

**Section 3 - Contract Amendment Authority**

I-4-3.01
The City Manager is authorized to enter into and execute for and on behalf of the City of Milpitas, without the prior approval of the City Council, any amendment to a Contract that was executed pursuant to their respective authority under this Chapter, which does not increase the compensation for the Contract to accomplish the following:

a. To extend the term of the Contract for a period not to exceed six (6) consecutive months from the last City Council approved termination date; or
b. To make minor revisions to the scope of services; or
c. To make clerical corrections.

I-4-3.02
In addition, the City Manager is authorized to approve assignments to contracts previously approved by the City Council when he or she has determined that the proposed assignee is at least as responsible and capable of performing the agreement as the original contractor.

**Section 4 - Limitations on Contract Authority**

I-4-4.01

This Chapter shall not authorize any City officer or official to enter into and execute any Contract which such officer or official is otherwise prohibited from entering into and executing under the provisions of the Municipal Code, or any other applicable law, or by any resolution or action of the City Council; or which may expose the City to an extraordinary risk which the City Council has not authorized.

I-4-4.02

The contract authority under this Chapter is in addition to the contract authority set forth in Chapter 2 of Title I of the Municipal Code.

**SECTION 3. ADDITION OF CHAPTER 5 TO TITLE I OF THE MILPITAS MUNICIPAL CODE**

Chapter 5 of Title I is added to the Milpitas Municipal Code to read as follows:

**CHAPTER 5 - SETTLEMENT AUTHORITY**

**Sections:**

**Section 1 - Settlement Authority of City Attorney**

I-5-1.01

The City Attorney is authorized to compromise and settle claims and actions for damages against the City, and/or against its officers and employees for conduct within the course and scope of their employment with the City where:

a. The amount to be paid by the City does not exceed Ten Thousand Dollars ($10,000).
b. The amount to be paid by the City does not exceed Thirty-Five Thousand Dollars ($35,000) if the City Manager also concurs with the compromise or settlement.
c. The City Attorney is authorized to enter into agreements on behalf of the City and its officers and employees as necessary to effectuate any authorized compromise and settlement.
d. The City Attorney shall report annually to the City Council the claims or actions against the City settled for an amount greater than Ten Thousand Dollars ($10,000).

**Section 2 - Settlement Authority of the Risk Manager**

I-5-2.01

a. The Risk Manager is authorized to compromise and settle any claims against the City for damages or claims for other money owed to the City where the amount to be paid does not exceed Ten Thousand Dollars ($10,000), provided the Risk Manager deems the compromise and settlement to be in the City's best interest. For purposes of any compromise and settlement pursuant to this provision, the Risk Manager is authorized to enter into any agreement for or on behalf of the City necessary to effectuate the compromise and settlement. To the extent the full amount owing to the City on any claim is not collected due to a compromise and settlement pursuant to this provision, the uncollected amount shall be deemed written off as uncollectible.

b. The Risk Manager shall report annually to the City Council the claims or actions against the City settled pursuant to this Section I-5-2.01.

**Section 3 - Write-off of Uncollectible Accounts**

I-5-3.01

The City Manager and the Director of Finance, jointly, are authorized to write off as uncollectible up to Fifty Thousand Dollars ($50,000) in total annually (and up to Ten Thousand Dollars ($10,000) for any single account or claim) on all accounts or claims which the City may have against all persons when the City Manager and Director of Finance determine that the claim is:

a. Uncollectible;
b. Possibly collectible but collection would not be reasonably cost effective taking into consideration the probable necessary cost to the City in pursuing collection and the likelihood of collection; or
c. Not a valid, enforceable claim of the City.

I-5-3.02
Notwithstanding Section I-5-3.01, the Director of Finance is authorized to write-off as uncollectable up to Ten Thousand Dollars ($10,000) on each unpaid account if the difference between the amount owed to the City on the unpaid account and the settlement amount does not exceed Ten Thousand Dollars ($10,000), whenever the Director of Finance deems the write off to be in the City's best interest.

I-5-3.03
A write-off pursuant to this Section is authorized solely to facilitate the keeping of the books of account of the City, and under no circumstances shall any such write-off be deemed to constitute a relinquishment or abandonment by the City of any such account or claim, and nothing in these sections shall be deemed or construed to prevent the City from collecting or enforcing payment of any such account or claim at any time.

I-5-3.04
Except as provided in this Section, no account or claim of the City shall be written off as uncollectible without the express authorization of the City Council.

**SECTION 4. REPEALING ACTION**

The City Council hereby repeals City Council Resolution No. 6765 adopted on May 5, 1998, and Resolution No. 6910 adopted on August 3, 1999, to be effective when this Ordinance No. 289 is effective.

**SECTION 5. SEVERABILITY**

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

**SECTION 6. EFFECTIVE DATE AND POSTING**

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

**RESOLUTION NO. ______**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE SOLE SOURCE PURCHASE AND INSTALLATION OF THE SYTECH CORPORATION ADVANCED DIGITAL AUDIO COLLECTION SYSTEM 4 FOR THE POLICE DEPARTMENT IN THE AMOUNT OF $26,739.38 AND APPROVING THE MAINTENANCE AND SUPPORT AGREEMENT IN THE ANNUAL AMOUNT OF $10,308.00**

**WHEREAS**, on April 15, 2014, the City Council accepted the 2014 Citizen Options for Public Safety (COPS) grant in the amount of $108,325.00 and the corresponding spending plan proposed by the Police Department; and

**WHEREAS**, the spending plan included an allocation of $30,300.00 for software and surveillance equipment, which has been identified as the Advanced Digital Audio Collection System 4 (ADACS4) by SyTech Corporation at a cost of $26,739.38; and

**WHEREAS**, the ADACS4 system enables law enforcement agencies to intercept, track, record, and analyze switch based voice, video, and data communications when authorized by a court order or under exigent circumstances; and

**WHEREAS**, the proposed system includes installation of hardware and software, training, and the first year of technical support and system maintenance at a cost of $26,739.38, and technical support, system upgrades and mobile carrier connectivity in the second through fifth years (from July 1, 2016 to June 30, 2020) at an annual cost of $10,308.00 per year; and

**WHEREAS**, SyTech Corporation maintains connections to all the major mobile carriers, which is a major advantage over similar products by other vendors who do not offer this service; and

**WHEREAS**, after the Purchasing Agent conducted a good faith review of the available sources for competing systems and having determined that there are no competitors that offer a system with all of the operational features, hardware, installation, training, and technical support, and mobile connectivity equivalent to SyTech Corporation, the Purchasing Agent recommends the City Council approve the purchase of the ADACS4 system pursuant to Milpitas Municipal Code Section I-2-3.09 “Sole Source Procurement”; and

**WHEREAS**, the City’s Purchasing Agent has determined that SyTech, Inc., is the creator of the software and only source for the purchase and support of the ADACS4 system.

**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 Manager is authorized to purchase the ADACS4 system by SyTech Corporation at a cost of $26,739.38.

3. The City Council hereby approves the SyTech Corporation Maintenance and Support Contract in the annual amount of $10,308.00 for the term from July 1, 2016 to June 30, 2020, subject to appropriation of funds and without further City Council approval. A copy of the contract is on file with the City's Purchasing Agent.

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

AYES:

NOES:

ABSENT:

ABSTAIN**:**

ATTEST: APPROVED:

_________________________________ _________________________________
Mary Lavelle, City Clerk Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_________________________________
Michael J. Ogaz, City Attorney

*15B

CITY OF MILPITAS

# SOLE SOURCE/BRAND REQUEST

**THIS FORM MUST BE COMPLETED AND APPROVED PRIOR TO ANY PROCUREMENT**

---

When a request is made for a non-competitive procurement and the specification limits the bidding to one source and/or one brand or trade name, the requesting department must complete the following. Please answer in the space provided, or in an attachment address by specific reference, each question listed below (1-5) in your justification. ***Be sure to answer each part of each question.*** **Failure to respond fully to any of the questions could result in delay or rejection of your request due to inadequate justification.**

---

1. Using appropriate detail, including brand name and model number, briefly describe the product you wish to procure. In the case of a service use enough detail to clearly describe to someone not familiar with the process what you are procuring.
   1. **SyTech ADACS4 Digital Pen Register System**
   2. **Pen Client Laptops**
   3. **CDC Network Service**
   4. **Installation and Training**

2. Please check one: **Cost: $ 26,739.38**

   a. √ SOLE SOURCE: Item is available from one source only. Item is one-of-a kind and is not sold through distributors. Manufacturer is exclusive distributor.

   b. ____ SOLE BRAND: Various sources can supply the specified model and brand; competitive bids will be solicited for the requested brand only. Meets form, fit and function - nothing else will do.

   c. ____ STANDARDIZATION REQUEST: The Department requires the item to standardize parts, design, quality etc. **(This requires further discussion with the Purchasing Agent.)**

3. 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?)
   **The Advanced Digital Audio Collection System 4 (ADACS4) by SyTech is a system that enables law enforcement agencies to intercept, track, record, and analyze switch based voice, video, and data communications when authorized by a Court order or under exigent circumstances. The ADACS4 has several specialized features, including a toll record mapping feature, the ability to import & analyze large amounts of acquired data, and full-time technical support. The proposed system includes software, hardware, installation, training, and technical support.**

**The single largest selling point for SyTech is that it maintains connections to all the major mobile carriers, which it then makes available to users for an annual fee of $5,400.00. In our search and communications with SyTech about the industry, we were only able to find two (2) competing products, neither of which offered this service. In discussing the situation with Information Services, we learned that it would take many thousands of dollars and man hours on an on-going annual basis to set up and maintain the necessary connections/contracts with all of the major mobile carriers.**

4. 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, and telephone number of the company representative who's product you tested.)***
**We tested and evaluated a similar product by PenLink (5936 VanDervoort Drive, Lincoln, NE 68516, 402-421-8857, John Spomer). The quote included software & a router and totaled $19,754.72, but additional needed equipment would be additional costs. The additional needed equipment included two (2) laptop computers (estimated at $1,100.00 each) and a dedicated high-speed internet connection, and the compatibility of the needed equipment would be our responsibility. The technical skills required by a user are also at a level at which the user essentially has to function as a system administrator and would need on-going training for maintenance and support. The user would also be responsible for connectivity issues and troubleshooting with all the major mobile carriers. The five (5) training modules required to maintain this level of support are PLX 101: Basic Analysis, Calls Analysis Training School, Pen-Link Advanced Class, Lincoln Administrative Training, and Cell Site Intelligence, and the cost of each training module is approximately $995.00. The training has been primarily offered in states other than California, which would require additional transportation & lodging costs. Recent training has been offered in Nashville, TN, Miami, FL, Lincoln, NE, Atlanta, GA, and Las Vegas, NV. (The customer support offered by SyTech would eliminate the need for a user to act as a system administrator.) We also inquired about a similar product by JSI Telecom (15004 Northridge Drive #100, Chantilly, VA 20151, 703-481-0075, Josh Walker), but the product does not offer any connectivity and/or support with mobile carriers. The police department has conducted extensive research and has been able to locate only the three (3) aforementioned vendors that offer such equipment and service.**

5. If justification is based on matching and/or intermixing with existing equipment (refer to 2.c.), list the quantity, manufacturer, brand, and model of the existing equipment, and why the matching is required not simply preferred.
(NOT APPLICABLE)

I HEREBY CERTIFY THAT:

1. I am an approved department representative, and am aware of the City's requirements for competitive bidding, as well as the criteria for justification for sole source/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/brand procurement and meeting the City's criteria.

4. A sole source/brand procurement in this case would withstand a possible audit or a vendor's protest.

REQUESTOR A. Kwong #790 DATE: 4 /29 /2015

DEPT./DIV. HEAD: 181 DATE: 4 /29 /15

**PURCHASING DIVISION USE ONLY:**

APPROVED: Yes MANAGER: Chris Schroeder

NOT APPROVED: ______ DATE: 5 / 5 / 15

COMMENTS:

SyTech **ADACS4**



**Milpitas Police Department** **10/14/2014**
**Reference: ADACS4**
**Subject: Sole Source Justification**

SyTech Corporation developed ADACS4 (Advanced Digital Audio Collection System) as its latest production of a complete intercept system. Since the development of ADACS4 we have made several advancements to the product to keep it in the forefront of intercept systems. Below is a list of items that separate ADACS4 from the competition. This list maintains items that are solely in use by SyTech Corporation's ADACS4 intercept system.

- Private CDC Delivery System for Pen Registers and Title 3 intercepts
- Automated and included Neustar Lookups
- Integrated Video Surveillance
- Direct Archiving
- Toll Record Mapping Feature
- Import from Cell Dump applications like Cell Brite and Secure View
- Scheduled Reports
- Subscriber Mapping Feature
- Title 3 Equipment for Lease

SyTech Corporation has also developed a new "add on" to the ADACS4 Intercept platform for monitoring a Android Phone in a "Body Wire" type of application.

This new software package allows the ADACS4 to connect to a customer provided Android Phone, using a licensed application written by SyTech to "listen" to the microphone of the phone thru the internet undetected. It also allows you to view the camera on the phone, as well as retrieve the GPS from the phone to monitor the phone's whereabouts live. The ADACS4 is a complete intercept system. It combines the ability of Title 3 and Pen Registers, along with GPS tracking, E911 Precision Email, IP Video and now the ADACS4 Smartbug. This package can only be purchased from SyTech Corporation, as SyTech is the original manufacturer of the system and developer of the proprietary software installed. SyTech Corporation is the only company to provide audio, data and video from Android Phones, as well as monitor all both from a Windows Mobile 7, Android, I-phone and/or PC.

Should you have any questions or if I can be of any further assistance please contact the undersigned at the phone number as shown above.

Regards,

Jeffrey S. Jerrell
**Director of Signal Interception**
Office: (703) 941-7887
Cell: (703) 932-2651
http://www.sytechcorp.com

*15C

# Quotation

Quote Date: 9/26/2014
Quote #: 2344
Sales Contact:
Federal Tax ID: 54-1587652

SyTech ADACS4

**Customer**
Alexander Prince
Milpitas Police Dept.
1275 North Milpitas Blvd.
Milpitas, CA 95035

**SyTech Corporation**
6121 Lincolnia Rd.
Suite 200
Alexandria VA, 22312
Phone: (703) 941-7887
Fax: (703) 941-7997

**Milpitas Pen System**

GSA Contract Holder
Contract GS-35F-5541H

| Item # | Description | Qty | Price | Extended Price |
|---|---|---|---|---|
| SA-6001-PR | ADACS4 Digital Pen Register Sytem 50% Off Normal Price *** With one Dell Server or similar | 1 | $29,900.00 | $14,950.00 |
| S-3001-03C | Pen Client Laptops 50% off Normal Price *** with 2 HP Laptops or similar | 2 | $5,500.00 | $5,500.00 |
| S-3060-NET | SyTech's CDC Network Service Free for First Year *** with one Cisco ASA firewall and High Speed Internet Connection | 1 | $5,400.00 | $0.00 |
| S-3050-01 | Installation and Training ***On site installation and training by sytech personnel | 1 | $4,500.00 | $4,500.00 |
| | | | | |

8.75%
T 1308.13
T 481.25
1789.38

**Total Quote** **$24,950.00**

+ $26,739.38

of the non discounted price.
Year 2 Costs:
Maintenance: 4908.00
CDC Network: 5400.00

Total Year 2: $10,308.00

*15D

# SYTECH CORPORATION

# MAINTENANANCE AND SUPPORT CONTRACT

## 1. OVERVIEW

SyTech Corporation's Maintenance and Support Plan will support the Customer's ADACS System in all aspects of day to day use of their ADACS system. Included in the Maintenance plan are the following:

(1) Access to SyTech's 24 hour, 7 day a week support, consisting of qualified technicians to every level of ADACS support.

(2) Dial-in technical support: This includes a dial-in capability for diagnostics, access to error logs, and the ability to download new software loads and/or patches to the system.

(3) Full coverage of all hardware included in the original purchase (excluding laptops, PDA's etc.). Repair or replacement in guaranteed in the Maintenance Plan. In most cases a replacement computer will be cross shipped with in 24 hours to limit customers down time.

**Maintenance Plan** The plan provides all software. Support is for all bug fixes and all new software features directly affecting the main purchase. All software bug fixes and new features considered to be enhancements to existing capabilities released by SyTech during the service contract period will be downloaded at no additional cost provided the software updates are compatible with the Customer's existing hardware. Depending on the software enhancement, SyTech reserves to right to charge for upgrades, which are considered to be over and above the original purchase.

## 2. Service Agreement

### 2.1 Specifications

The terms of this Maintenance and Support Contract will apply for the period from July 1, 2015 to June 30, 2020. SyTech, as well as the customer reserves the right to terminate this contract by giving written notice within 30 days of a contract end date. SyTech Corporation's obligation under this agreement is to provide the highest level of service as stated in this document. The customer is obligated to give SyTech access to any and all equipment covered under this agreement. SyTech undertakes; the responsibility to respond to a Customer's call within 30 minutes during normal business hours Monday thru Friday (8am to 6pm ET) and within two (2) hour(s) during non-business hours (7 days a week). The Customer will notify SyTech Corporation promptly of any system malfunction that comes to the Customer's attention. In a "System Down" scenario, SyTech will attempt by all means necessary (including dialing in to the system) to resolve any problem remotely, before dispatching a technician to an on site location to resolve the issue.

The customer agrees to pay any additional taxes or other charges implemented by any government entity related to the ownership of the equipment and or services covered in this document. The Customer agrees to treat all information provided as Proprietary. The Customer may not assign its rights or delegate its obligations under this agreement, in whole or in part, without the prior written consent of SyTech Corporation. SyTech Corporation may assign its right to receive payment to a third party.

**2.2 SyTech Warranty and Support Plan –** Included in this one year warranty is free software upgrades for the first year. Failed equipment requiring repairs will be replaced via over night mail service (FEDEX or UPS). SyTech will provide telephone help desk support during the replacement process. The failed equipment will be returned to SyTech for any repairs. On site emergency support is also offered in our standard system price. All workmanship is in IAW best industrial practices and with SyTech Quality Assurance Procedures. All equipment is fully tested at the SyTech facility using full load conditions. For the price of the system, 24 X 7 X 365 help desk maintenance assistance and free software upgrades are available for the warranty period. From 8:00 AM to 5:00 PM EST a maintenance technician is available to provide assistance. During the evenings and holidays a toll free 800 line is available for reporting problems. A real live person will answer the 800 line. The operator will take down some information and will page a SyTech technician. SyTech has a policy of having a primary, secondary and a back up to take any service calls. SyTech guarantees that all trouble calls will be responded to within two (2) hour(s). For problems that cannot be fixed by a technician over the phone or via remote dial-in, a SyTech technician will fly to travel to the site if necessary, to fix the problem. On-site support for major failures will be the same business day if notified before 09:00 AM, and the next business day if notified after 09:00 AM. On-site support for minor failures will be second business day. The warranty covers all system components provided by the SyTech for use in the analog, pre-CALEA and CALEA environments. This service may be continued for the life of the system. At the beginning of the final warranty year, the approved SyTech will enter into negotiations with the authorized representative of the customer for hardware and software upgrades, maintenance and repairs.

The agreement assumes the system covered to be in maintainable condition. If repairs are found necessary upon inspection, repair charges will be submitted for approval. Should these charges be declined, those non-maintainable items will be eliminated from the program and the agreement price adjusted accordingly. It is understood that the repair and replacement provisions apply only to the systems and equipment covered by this agreement. In the event that the system or any equipment component thereof is altered, modified, changed, or moved, this agreement may be immediately adjusted or terminated at SyTech Corporation's option. SyTech Corporation reserves the right to refuse support to selected hardware and may instead offer a Hardware Upgrade option.

**2.3 Obligation, Liability**

SyTech Corporation shall replace or repair any hardware that fails within the Maintenance Contract period because of defective materials and/or workmanship. If it is deemed by SyTech that the failure or damage was a result of Customer negligence, the equipment will be replaced at the customer's expense. It is also assumed the ADACS system will be housed in a location that is safe from fire, water damage, power surges by lightning, or any other means, etc. The equipment must also be kept in a well ventilated, air conditioned environment. If the equipment is deemed to be damaged by any of the above reasons, the equipment will also have to be replaced at the customer's expense. The warranty applies only to SyTech provided products. All such warranties expire at the termination of this agreement. All ADACS system main servers shall be powered from an uninterruptible power source (UPS) to allow for a sequential system shutdown in an extended power outage, as well as to protect against mile power surges. SyTech's ADACS system comes with a working backup for data on the system. SyTech does not warranty all data captured or maintained on the system. SyTech will assist in retrieving backups, as well as reconfiguring system to working order in case of system failure. Customers are trained on how SyTech's backup procedures work, and are encouraged to perform their own backups of important system files, and kept out and outside facility. SyTech will assist in setting up procedures for any customer for data backup. SyTech does offer equipment to reduce the chance of data loss in the form of Jukeboxes, RAIDs, and will and have assisted in setting up connections to remote locations for data backups. Any injuries to persons or damage to property while using, maintaining, or servicing any equipment provided by SyTech, WILL NOT be liable SyTech

**3. SyTech's Support Service**

SyTech prides itself on having the most knowledgeable support staff in the industry. When using the service contact a SyTech Support Department at:
1-800-385-8977 or
1-703-942-7887
SyTech will need certain information when you make the call so please have this information ready:

- Site Location
- Name (SyTech company policy only allows us to speak to known customer representatives.)
- Server or application causing problem
- Software Version
- Description of the problem
- Call back number

SyTech's support staff will be courteous and polite, and will work quickly to resolve any problem in a timely fashion. If you are not satisfied with the support you received from you SyTech Support Technician, please contact the below SyTech Representatives:

| | |
|---|---|
| Project Manager: | Mike Sunderlin |
| Director: | Jeff Jerrell |
| CEO/Owner: | Gil Armendariz |

**SYTECH CORPORATION**

**MAINTENANCE and SUPPORT CONTRACT**

Contract Number: 2015070101

Date: 5/11/2015

| | |
|---|---|
| SyTech Corporation<br>6121 Lincolnia Rd.<br>Suite 200<br>Alexandria VA, 22312<br>703 941 7887 | Customer: Milpitas Police Dept .<br>1275 N. Milpitas Blvd<br>Milpitas, CA 95035<br>408-586-2400 |

All services will be conducted by SyTech in accordance with this contract.

| | |
|---|---|
| Original System Price: | $24,950.00 |
| Second System Price: | $0.00 |
| Orig. System Maint Cost: | $4,908.00 |
| Second System Maint Cost: | $0.00 |
| CDC Connectivity Price Yr.1: | $5,400.00 |
| CDC Connectivity Price Yrs 2+: | $0.00 |
| Contract Price First Year: | $10,308.00 |
| Contract Price Additional Years: | $10.308.00 |
| Support Contract Term: | 5 years |
| Contract Start Date: | 7/1/2015 |
| Contract End Date: | 6/30/2020 |

This contract is considered to be "Approved" only when signed by the applicant and an authorized representative of SyTech Corporation, and is contingent upon receipt of payment by customer.

| | | |
|---|---|---|
| SyTech Representative | Title | Date |
| Customer Representative | Title | Date |

# RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE PURCHASE OF A BAUER BREATHING AIR COMPRESSOR SYSTEM FOR THE FIRE DEPARTMENT IN THE AMOUNT OF $64,351.76 PURSUANT TO MILPITAS MUNICIPAL CODE SECTION I-2-3.07 (PIGGYBACK PROCUREMENT)**

**WHEREAS**, in December 2013, the Milpitas Fire Department submitted an Assistance to Firefighters Grant application requesting funding for a new breathing air compressor system; and

**WHEREAS**, the Department of Homeland Security awarded a grant to the City of Milpitas in September 2014 in the amount of $48,713.00 with a required matching fund of $15,638.76; and

**WHEREAS**, Assistance to Firefighters Grants provide funding directly to fire departments to enhance operational response capabilities and firefighter safety; and

**WHEREAS**, the City Council of the City of Milpitas accepted the grant on March 3, 2015; and

**WHEREAS**, on April 16, 2015, the town of Castle Rock, Colorado awarded a nationally advertised Request for Proposal for “SCBA Breathing Air System” to Centennial Fire and Safety Equipment for a Bauer breathing air compressor system; and

**WHEREAS**, Bauer Compressors has agreed to offer the same pricing and terms of that procurement to the City of Milpitas; and

**WHEREAS**, Section I-2-3.07 of the Milpitas Municipal Code authorizes the City Council to approve contracts without the City completing its competitive process when the Purchasing Agent determines that (i) there no local suppliers or contractors, (ii) another public agency completed a competitive process in substantial compliance with the City’s requirements, (iii) City’s specifications are similar to those specified in the originating agency’s solicitation, (iv) purchase price is lower than if the City made the purchase through its own process, (v) the competitive process was completed within the past two years, (vi) City enters into the same terms and conditions with the vendor selected by the originating agency; and

**WHEREAS**, a copy of the Request For Proposal of the town of Castle Rock, Colorado was obtained and reviewed for compliance with the City’s Purchasing Ordinance by the Purchasing Agent and the Purchasing Agent determined all of the above-referenced criteria have been met.

**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. Pursuant to Milpitas Municipal Code Section I-2-3.07, the City Purchasing Agent is authorized to purchase by separate Purchase Order a Bauer breathing air compressor system for the Fire Department in an amount not to exceed $64,351.76.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____________________________

Mary Lavelle, City Clerk

APPROVED:

_________________________________

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

___________________________

Michael J. Ogaz, City Attorney

*16B

**BAUER COMPRESSORS**

267 East Airway Blvd
Livermore, CA 94551
Phone: 925-449-7210
Fax: 925-449-7201

Date: 5/12/2015

**To:**
Captain Geoffrey Maloon
Milpitas Fire Department
777 So. Main Street
Milpitas, CA 95035
Phone: 408-586-2820
Email: gmaloon@ci.milpitas.ca.gov

**Quotation Valid for 60 Days.**

**Attention: Captain Geoffrey Maloon**

| ITEM | QTY | DESCRIPTION | PRICE | AMOUNT |
|---|---|---|---|---|
| 1 | 1 | Unicus III/25H-E3<br>Working pressure: 6,000 psi<br>Charging rate: 25.2 scfm<br>Horsepower: 20 three phase | | $54,360.00 |
| 2 | 1 | Electronic CO Monitor w/Calibration Kit<br>P/N MNR-29/CAL | | Inc. |
| 3 | 2 | Additional 6,000 PSI ASME Air Storage<br>Cylinders (Total of Four (4) Cylinders)<br>P/N CYL-9/6K | | Inc. |
| 4 | 1 | Panel Mounted Remote Fill Hose Reel 75ft.<br>P/N UNIII/RF/REL-9 | | $2,000.24 |
| | | Sub Total | | $56,360.24 |
| | | Sales Tax 8.75% | | $4,931.52 |
| | | Freight | | $2,100.00 |
| | | Installation/Training | | $960.00 |
| | | Total | | $64,351.76 |

**Note:** Bauer SF will deliver compressor to fire station, place new unit into installation site, make hook up to supplied electrical power, make final run test of compressor and perform operational training for Milpitas FD personnel. Bauer will move existing ASME Air Storage to SCBA Test Station. Electrical work is responsibility of Milpitas FD.

Prices do not include shipping/handling charges or sales tax unless specified.
**Quotation prices are valid for 60 days.** Call 925-449-7210 if past expiration date.

Thank you for the opportunity to submit this quotation. If you have any questions please give us a call.

Sincerely,

Tim McGuire
267 E. Airway Blvd.
Livermore, CA 94551
Phone: 925-449-7210
Fax: 925-449-7201
tim.mcguire@bauersf.com

*17A

**RESOLUTION NO. ______**

**A RESOLUTION OF THE CITY OF MILPITAS IDENTIFYING THE TERMS AND CONDITIONS FOR FIRE DEPARTMENT RESPONSE AWAY FROM THEIR OFFICIAL DUTY STATION AND ASSIGNED TO AN EMERGENCY INCIDENT**

**WHEREAS**, the Milpitas Fire Department is a public agency located in the County of Santa Clara, State of California; and

**WHEREAS**, it is the City of Milpitas' desire to provide fair and legal payment to all its employees for time worked; and

**WHEREAS**, the City of Milpitas has in its employ Fire Department response personnel, including: Fire Chief, Deputy Chief, Battalion Chief, Fire Captain, Engineer/Paramedic, Engineer, Firefighter/Paramedic, Firefighter/EMT; and

**WHEREAS**, the City of Milpitas will compensate its employees portal to portal while in the course of their employment and away from their official duty station and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response; and

**WHEREAS**, the City of Milpitas will compensate its employees for overtime in accordance with their current Memorandum of Understanding while in the course of their employment and away from their official duty station and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response.

**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. Personnel shall be compensated according to the Memorandum of Understanding (MOU), Personnel Rules and Regulations, and/or other directive that identifies personnel compensation in the workplace.

3. In the event a personnel classification does not have an assigned compensation rate, a "Base Rate" as set forth in an organizational policy, administrative directive or similar document will be used to compensate such personnel.

4. The Milpitas Fire Department will maintain a current salary survey or acknowledgement of acceptance of the "base rate" on file with the California Governor's Office of Emergency Services, Fire Rescue Division.

5. Personnel will be compensated (portal to portal) beginning at the time of dispatch and to the time of return to jurisdiction when equipment and personnel are in service and available for agency response.

6. Fire Department response personnel include: Fire Chief, Deputy Chief, Battalion Chief, Fire Captain, Engineer/Paramedic, Engineer, Firefighter/Paramedic, and Firefighter/EMT.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

| | |
|---|---|
| ATTEST: | APPROVED: |
| ___________________________________ | ___________________________________ |
| Mary Lavelle, City Clerk | Jose S. Esteves, Mayor |

APPROVED AS TO FORM:

___________________________________
Michael J. Ogaz, City Attorney

*17B

Cal OES# 6051-4
CAL FIRE# 7CA02564
USFS# I5-FI-11052012-107
NPS# P14AC01610
BLM# BAA151002
FWS# FFF300008-15-002
BIA# A15ACPRO01

**AGREEMENT FOR LOCAL GOVERNMENT FIRE AND EMERGENCY ASSISTANCE TO THE STATE OF CALIFORNIA AND FEDERAL FIRE AGENCIES**

**Between**

**STATE OF CALIFORNIA, GOVERNOR'S OFFICE OF EMERGENCY SERVICES;**
**STATE OF CALIFORNIA, DEPARTMENT OF FORESTRY AND FIRE PROTECTION;**
**USDA FOREST SERVICE, PACIFIC SOUTHWEST REGION;**
**USDI BUREAU OF LAND MANAGEMENT, CALIFORNIA STATE OFFICE;**
**USDI NATIONAL PARK SERVICE, PACIFIC WEST REGION;**
**USDI FISH AND WILDLIFE SERVICE, PACIFIC SOUTHWEST REGION; and**
**USDI BUREAU OF INDIAN AFFAIRS, PACIFIC REGION**

**THIS AGREEMENT** made and entered into on last date signed by and between the State of California, Governor's Office of Emergency Services, hereinafter referred to as **Cal OES**; the State of California, Department of Forestry and Fire Protection, hereinafter referred to as **CAL FIRE**; the USDA Forest Service, Pacific Southwest Region; the USDI Bureau of Land Management (BLM), California State Office; the USDI National Park Service (NPS), Pacific West Region; USDI Fish and Wildlife Service (FWS), Pacific Southwest Region, and USDI Bureau of Indian Affairs (BIA), Pacific Region, hereinafter referred to as the **Federal Fire Agencies**; all parties hereinafter referred to as the **Cal OES, CAL FIRE, and the Federal Fire Agencies**, under the provisions of the Act of December 12, 1975, PL 94-148, the Act of April 24, 1950 (16 USC 572), the Reciprocal Fire Protection Act, 42 USC 1856a, the Disaster Relief Act of 1974, PL 93-288, and The Federal Land Policy and Management Act of 1996, (PL 94-579, Sec, 307(b)).

## NAME

This Agreement shall be entitled "Agreement for Local Government Fire and Emergency Assistance to the State of California and Federal Fire Agencies", hereinafter referred to as the "**California Fire Assistance Agreement**", or **CFAA.**

## RECITALS

1. The Federal Fire Agencies are responsible for providing a level of wildland fire protection for federal lands, as designated by Congressional action and Federal policy; and

2. CAL FIRE is responsible for providing a level of wildland fire protection for State Responsibility Area lands, as designated by the State Board of Forestry and Fire Protection; and

3. For efficiency and effectiveness, CAL FIRE and the Federal Fire Agencies may exchange protection area responsibilities with the understanding that Local Responsibility Area lands are not part of this Agreement or included in the exchange; and

4. Cal OES is responsible to provide for systematic mobilization, organization, and operation of necessary fire and rescue resources through the California Fire and Rescue Mutual Aid System in mitigating the effects of disasters and to ensure that the responding agencies understand the terms and conditions of the Agreement applicable to their response; and

5. Cal OES, CAL FIRE , the Federal Fire Agencies, and local agencies, at times of severe wildfire conditions and other emergencies, often have need of emergency apparatus and/or personnel to provide fire protection or perform other tasks during control actions; and

6. Cal OES, through the California Fire and Rescue Mutual Aid System, has such emergency apparatus and personnel, which may be available in the spirit of cooperation for dispatch and use; and

7. It is desirable that Cal OES, CAL FIRE, and the Federal Fire Agencies establish and enter into an Agreement for the prudent use of such emergency apparatus and personnel; and

8. Cal OES, CAL FIRE, and the Federal Fire Agencies will generally use this Agreement for engines, water tenders, and overhead to address incidents once local agreement resources are exhausted, or where a local agreement is not in place; and

9. This Agreement may be used to reimburse overhead for incident management teams where a local agreement is not in place; and

10. Cal OES, CAL FIRE and the Federal Fire Agencies shall use this Agreement as the fiscal authority for reimbursing local government agencies for the use of their resources. Annual operating plans may be utilized at the local level to facilitate administrative and operational issues; and

11. When this Agreement is exercised to obtain Cal OES resources and/or resources through the California Fire and Rescue Mutual Aid System, those resources will be reimbursed pursuant to this Agreement; and

12. When ordering any resource in Recital 5 of this Agreement from other agencies through the California Fire and Rescue Mutual Aid System, a local agency may utilize this Agreement as the fiscal authority for reimbursing other local agencies; and

13. Responsibility for determining the basis for requesting assistance through this Agreement rests with the Incident Commander or through the Emergency Command Center. The Incident Commander is responsible for all assignments and tactical decisions for resources obtained through this Agreement; and

14. Except as otherwise provided in Recital 25 of this Agreement, all parties to this Agreement hereby waive claims between and/or against each other arising from the performance of this Agreement, for compensation for loss or damage to each other's property, and personal injury including death, of employees, agents, and contractors, except that this waiver shall not apply to intentional torts; and

**15. Agreement Committee**

15.1 **California Fire Assistance Agreement Committee.** A California Fire Assistance Agreement Committee (the 'Committee') shall be formed by Cal OES for the purpose of negotiating the terms of the CFAA, and for maintenance of the Agreement. For the purposes of coordination, Cal OES Fire and Rescue Division Chief, or the Chief's designee, shall serve as the Chairperson.

15.2 **Composition of the Committee.** The Committee shall consist of Cal OES, CAL FIRE, the Federal Fire Agencies, and three advisory representatives from local government fire agencies in California: one from Northern California, one from Southern California, and one representing volunteer fire departments. The local government agency representatives shall be appointed by the Chairperson of the State of California Fire and Rescue Advisory Committee/FIRESCOPE, Board of Directors.

15.3 **Meetings to establish reimbursement rates and new methods of reporting or invoicing.** The Committee will meet in person annually to establish the Base Administrative Rate, Personnel Base Rates, and Equipment Rates to become effective upon publication of the rate letter each year. These rates will be published annually by Cal OES Fire and Rescue Division, in an "Agreement for Local Government Fire and Emergency Assistance to the State of California and Federal Fire Agencies Rate Letter".

The Committee will also review the Average Actual Rates, Actual Administrative Rates, Workers' Compensation Rates, and the Unemployment Rates on file with Cal OES Fire and Rescue Division, as well as negotiate procedural changes. The Average Actual Rates, Actual Administrative Rates, Workers' Compensation Rates, and Unemployment Rates are subject to change throughout the year due to labor negotiations, cost of living increases, and insurance rate recalculations, etc.

15.4 **Change in rates after the publication of the Annual Rate Letter.** Cal OES will monitor and track the Federal Emergency Management Agency (FEMA) Schedule of Equipment Rates and will notify the Committee of any rate changes. The Committee will, at a minimum, conduct a conference call to formally discuss the new rates and determine if they are valid for a revised rate letter publication. Cal OES will forward the revised rates to the CFAA signatories for a two week review. Once the review process is complete and approved, a revised rate letter will be established and released for publication to the California Fire and Rescue Mutual Aid System Agencies.

15.5 **Meetings to re-negotiate the Agreement.** The Committee shall schedule meetings to begin no later than 12 months before the expiration date of the CFAA for the purpose of re-negotiation. It is recommended that the Committee produce the final document for signatures no later than six months before the expiration date of the Agreement.

The Committee will meet as necessary to make adjustments or changes to the Agreement.

**THEREFORE, it is agreed as follows:**

## TERMS AND CONDITIONS

**Incorporation of Exhibits into Agreement**

16. The following exhibits are incorporated into this Agreement:

A. Reimbursement Policy and Procedures
B. ICS Type 3, 4, 5, 6, & 7 Engine, Equipment, Personnel, & Training Standards for Fire and Emergency Assistance
C. Reimbursement for Personnel Rotation
D. Communications Capabilities
E. ICS Tactical Water Tender, Equipment, Personnel, and Training Standards for Fire and Emergency Assistance
F. FEMA Equipment Rate Formula
G. Reimbursement Policy and Procedures for Outside the State of California Assignments
H. In-State Travel and Incident Related Expenses
I. Definitions

Exhibits to the Agreement may be revised upon request of the signatory agencies. The latest revision of any exhibit will be automatically incorporated into this Agreement without requiring a formal modification as defined in Recital 34.

**Requests for and Release of Emergency Apparatus and Personnel**

17. Under this Agreement, Cal OES, CAL FIRE, the Federal Fire Agencies, and local agencies may request emergency apparatus and personnel from the California Fire and Rescue Mutual Aid System. Resources ordered pursuant to this Agreement will be processed through the California Fire and Rescue Mutual Aid System. Cal OES will fill these orders by following the procedures set forth in the California Fire Service and Rescue Emergency Mutual Aid Plan.

18. Cal OES, CAL FIRE and the Federal Fire Agencies will use the current Resource Order Form (automated Resources Ordering and Status System, or equivalent) for all requests. Cal OES, CAL FIRE, and the Federal Fire Agencies shall not be responsible for any emergency apparatus and personnel not confirmed by their respective order and request number(s). Cal OES, CAL FIRE, and the Federal Fire Agencies are responsible for documenting within the request that the resources are being ordered under this Agreement.

19. Cal OES, CAL FIRE, the Federal Fire Agencies, and local agencies release or reassignment of emergency apparatus used pursuant to this Agreement will be coordinated through the on-scene Cal OES Fire and Rescue Chief Officer, the local jurisdiction agency representative, or their authorized representative. The Cal OES Chief officer or representative will ensure the inspection and inventory of such emergency apparatus prior to release to its home base in accordance with incident-established inspection and demobilization procedures.

**Protective Clothing and Equipment**

20. It shall be the responsibility of the jurisdiction sending emergency personnel to ensure that such personnel are provided protective clothing and equipment as required by the most current version of the rules found at California Code of Regulations, Title 8, Section 3410, Article 10.1, Section 3401, et seq.

**Emergency Apparatus**

21. Emergency apparatus shall meet minimum ICS type standards.

**Communications Capabilities**

22. **Strike Team/Task Force Leaders.** It shall be the responsibility of the jurisdiction sending a Strike Team/Task Force Leader to ensure that the leader has adequate communications capability. Adequate communications capability is identified and defined in the Statewide FIRESCOPE Frequency Plan.

**Emergency Apparatus.** It shall be the responsibility of the jurisdiction sending emergency apparatus to ensure that the emergency apparatus has common communications capability with the Strike Team/Task Force Leader. It is desirable that emergency apparatus have adequate communications capability as defined above.

**Reimbursement Procedures**

23. Provisions and procedures for reimbursement by Cal OES, CAL FIRE, and the Federal Fire Agencies for fire and emergency assistance are defined in Exhibit "A", Reimbursement Policy and Procedures. CAL FIRE and the Federal Fire Agencies will provide Cal OES Fire and Rescue Division with current billing addresses. Reimbursement for personnel on Cal OES-owned emergency apparatus shall be to local jurisdictions that provide such personnel by apparatus assignee Agreement with Cal OES.

24. It is desirable that Cal OES, CAL FIRE, and the Federal Fire Agencies establish a system that supports the electronic processing of salary surveys, invoices, and other pertinent documents.

**Reimbursement for Emergency Apparatus Loss or Damage**

25. Cal OES, CAL FIRE, and the Federal Fire Agencies may reimburse California Fire and Rescue Mutual Aid System Agencies providing resources through the California Fire and Rescue Mutual Aid System for the cost of emergency apparatus or equipment loss or damage where the loss or damage is directly attributable to the incident, and where the local agency, its employees, and/or operational failures in the emergency apparatus or support equipment are not a contributing factor to such damage or loss. Loss or damage to local agency emergency apparatus or support equipment while travelling to or from an incident, and repairs due to normal wear and tear or due to negligent or unlawful operation by the operator, shall be the responsibility of the local agency providing the emergency apparatus or support equipment.

26. Loss or damage to local agency emergency apparatus or support equipment occurring on an incident is to be reported to the incident finance section to ensure proper documentation and investigation.

27. Except as otherwise provided in Recital 25 of this Agreement, all parties to this Agreement hereby waive claims between and/or against each other arising from the performance of this Agreement for compensation for loss or damage to each other's property, and personal injury including death of employees, agents, and contractors. This waiver shall not apply to intentional torts.

**Claims Dispute Resolution**

28. Should a California Fire and Rescue Mutual Aid System Agency not be able to resolve a claim regarding compensation, reimbursement, damage or equipment repair through negotiation with a forest agency, it should contact the appropriate agency's claims division, listed below:

28.1 **California Department of Forestry and Fire Protection Incidents:**
Victim Compensation and Government Claims Board
630 "K" Street
Sacramento, CA 95814

28.2 **U. S. Forest Service Incidents:**
Albuquerque Service Center
Claims Management
101B Sun Ave. NE
Albuquerque, NM 87109

28.3 **National Park Service Incidents:**
Fire Management Office
National Park Service
333 Bush St., Suite 500
San Francisco, CA 94104

28.4 **Bureau of Land Management Incidents:**
Bureau of Land Management
Branch of Fire and Aviation Management
2800 Cottage Way
Sacramento, CA 95825

28.5 **Fish and Wildlife Service Incidents:**
Fish and Wildlife Service
Pacific Southwest Region
2800 Cottage Way, W1834
Sacramento, CA 95825

28.6 **Bureau of Indian Affairs Incidents:**
Bureau of Indian Affairs
Branch of Fire and Aviation Management
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

**Examination and Audit**

29. California Fire and Rescue Mutual Aid System Agencies and Cal OES shall be subject to examination and audit for five years after the final payment under the terms of this Agreement. Examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited, to the cost of administration.

**Appropriated Fund Limitation**

30. Nothing herein shall be interpreted as obligating any parties herein to expend funds, or as involving the United States or the State of California in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for the work contemplated in this Agreement.

**Officials Not To Benefit**

31. No member of, or Delegate to, Congress or Resident Commission shall be admitted to any share or part of this Agreement or to any benefit to arise therefore, unless it is made with a corporation for its general benefit.

**Civil Rights and Nondiscrimination**

32. The cooperators shall comply with all federal statutes relating to nondiscrimination and all applicable requirements of all other federal laws, executive orders, regulations, and policies. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-16), which prohibits discrimination on the basis of race, color, disability, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794) which prohibits discrimination on the basis of disabilities and provides for "reasonable accommodation" in hiring of persons with disabilities; and (d) the Older American Act of 1965 as amended (42 U.S.C. 3056 and 6101 et. seq.).

**Previous Agreements Cancelled**

33. This Agreement supersedes the Agreement entered into on October 20, 2009, and as extended January 1, 2014, June 30, 2014, and September 1, 2014 (Cal EMA# 6022-9, CAL FIRE# 7CA00236, USFS# 09-FI-11052012-150, NPS# H807507003, BLM# BAA081002, F&WS# 802233-9-J001, BIA# AGP000768), between the State of California, Emergency Management Agency; State of California, Department of Forestry and Fire Protection; USDA Forest Service, Pacific Southwest Region; USDI Bureau of Land Management, California State Office; USDI National Park Service, Pacific West Region; USDI Fish and Wildlife Service, Pacific Southwest Region; and USDI Bureau of Indian Affairs, Pacific Region.

**Amendments**

34. Except as otherwise provided in Recitals 15 and 16, this Agreement may only be amended by written mutual consent of the parties hereto.

**Effective Date and Termination**

35. The parties herein agree to honor the terms and conditions commencing on January 1, 2015. This Agreement shall remain in effect until December 31, 2019. The Agreement may be terminated by any one of the parties upon 30 days' written notice to all the other parties.

**Multiple Signature Pages**

36. The parties agree to accept multiple signature pages.

| | |
|---|---|
| Cal OES# | 6051-4 |
| CAL FIRE# | 7CA02564 |
| USFS# | I5-FI-11052012-107 |
| NPS# | P14AC01610 |
| BLM# | BAA151002 |
| FWS# | FFF300008-15-002 |
| BIA# | A15ACPRO01 |

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

DIRECTOR
STATE OF CALIFORNIA
GOVERNOR'S OFFICE OF
EMERGENCY SERVICES

By: Mark S. Ghilarducci
Director

Date: 12-10-14

DIRECTOR
STATE OF CALIFORNIA
DEPARTMENT OF FORESTRY
AND FIRE PROTECTION

Ken Pimlott

By: Ken Pimlott
Director

Date: 8/27/14

REGIONAL FORESTER
USDA FOREST SERVICE
PACIFIC SOUTHWEST REGION

Randy Moore

By: Randy Moore
Regional Forester

Date: 12/15/14

CALIFORNIA STATE DIRECTOR
USDI BUREAU OF LAND
MANAGEMENT
CALIFORNIA STATE OFFICE

Karen Barnette

for By: James Kenna
California State Director

Date: 12/9/14

REGIONAL DIRECTOR
USDI NATIONAL PARK SERVICE
PACIFIC WEST REGION

for: Martha L

By: Chris Lehnertz
Regional Director

Date: 12/10/14

REGIONAL DIRECTOR
USDI BUREAU OF INDIAN AFFAIRS
PACIFIC REGIONAL OFFICE

Amy L Dutschke

By: Amy Dutschke
Regional Director

Date: 12/17/14

REGIONAL DIRECTOR
USDI FISH AND WILDLIFE SERVICE
PACIFIC SOUTHWEST REGION

Alexandra Pitts

Acting

By: Ren Lohoefener
Regional Director

Date: 12.12.14

**Cal OES# 6051-4**
**CAL FIRE# 7CA02564**
**USFS# I5-FI-11052012-107**
**NPS# P14AC01610**
**BLM# BAA151002**
**FWS# FFF300008-15-002**
**BIA# A15ACPRO01**

REVIEW:
The authority and format of this instrument has been reviewed and approved for signature by the following individuals:

CONTRACTING OFFICER
USDI BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE

Traci D Thaler 12/8/2014

By: Traci D. Thaler
Contracting Officer

Date: (date signed above)

CONTRACTING OFFICER
USDI BUREAU OF INDIAN AFFAIRS
PACIFIC REGIONAL OFFICE

By: Jodi Zachary
Contracting Officer

Date: 1/9/15

CONTRACTING OFFICER
USDI NATIONAL PARK SERVICE

By: Leo Guillory
Contracting Officer

Date: 12/10/2014

CONTRACTING OFFICER
USDI FISH AND WILDLIFE SERVICE
REGION 1 / REGION 8

By: Alice Garrett
Contracting Officer

Date: 12.11.14

GRANTS & AGREEMENTS SPECIALIST
USDA FOREST SERVICE
PACIFIC SOUTHWEST REGION

By: Constance Zipperer
Grants and Agreements Specialist

Date: 8 December 2014

**Cal OES#** **6051-4**
**CAL FIRE#** **7CA02564**
**USFS#** **I5-FI-11052012-107**
**NPS#** **P14AC01610**
**BLM#** **BAA151002**
**FWS#** **FFF300008-15-002**
**BIA#** **A15ACPRO01**

# EXHIBIT "A"
# REIMBURSEMENT POLICY AND PROCEDURES

## GENERAL

A-1. It is the intent of the signatories to the CFAA to compensate California Fire and Rescue Mutual Aid System Agencies for the cost of assisting the State of California and the Federal Fire Agencies. The rates, methodologies, and formulas in the Agreement are intended to provide for such costs. The compensation shall be consistent with the California Fire and Rescue Mutual Aid System Agency's normal internal business practices and any existing memorandum of understanding (MOU)/memorandum of Agreement (MOA), governing body resolution, or equivalent, which supports those business practices.

A-2. The California Fire and Rescue Mutual Aid System Agencies shall use the following procedures to secure reimbursement for the provision of personnel and local government-owned emergency apparatus. Terms established in this section shall be made binding upon California Fire and Rescue Mutual Aid System Agencies by Cal OES and shall not be subject to interpretation or rejection by the jurisdiction providing assistance. See Clause A-36 for procedures that do not apply or are applicable to State Agency Fire Departments, Department of Defense Fire Departments, or Tribal Fire Departments.

A-3. California Fire and Rescue Mutual Aid System Agencies that provide their personnel and equipment to the State of California or the Federal Fire Agencies through the California Fire and Rescue Mutual Aid System and this Agreement, do so on a voluntary basis, and accept the following provisions for reimbursement.

A-4. It is understood and agreed that a California Fire and Rescue Mutual Aid System Agency providing personnel or California Fire and Rescue Mutual Aid System Agency-owned emergency apparatus shall obtain reimbursement for such response by billing the ordering entity (either the State of California or Federal Fire Agency) through the Cal OES invoicing process in accordance with this Exhibit.

A-5. Reimbursement for personnel and emergency apparatus will begin after the 12th hour. There shall be no reimbursement for responses of 12 hours duration or less with the exception of the Department of Interior (DOI) fire agencies (BLM, NPS, FWS, and BIA). DOI will reimburse from time of dispatch. If the duration of the response exceeds 12 hours and local agencies have an existing MOU/MOA, governing body resolution, or equivalent that indicates compensation for all hours worked, reimbursement for personnel and emergency apparatus shall cover the entire time of commitment, beginning at the time of initial dispatch from home base, to the time of return to home base. If local agencies do not have an existing MOU/MOA, governing body resolution, or equivalent that indicates compensation for all hours worked, local agencies will be reimbursed for actual hours worked. Should personnel or emergency apparatus be requested for assignment to a Mobilization Center for standby duty, the reimbursement period shall begin with the time of initial dispatch of said personnel or emergency apparatus from its home base. Additionally, as the 12 hour period stated above is cumulative, responding personnel and/or emergency apparatus shall only be subject to one 12 hour period from the original time of dispatch, regardless of the number of re-assignments that may occur prior to returning to their home base.

A-6. In some cases on a single incident, the State of California and the Federal Fire Agencies may need to convert resources that were ordered under Statewide Master Mutual Aid (MMA) to reimburse resources under the California Fire Assistance Agreement. In these cases, MMA resources will be released by the responsible agency and reordered by the State of California and/or the Federal Fire Agencies through the CFAA. For resources that have been on the same incident for more than 12-hours, reimbursement will begin at the time the order under the California Fire Assistance Agreement was initiated. Resources that have been on the same incident under MMA for 12-hours or less will have their time applied to the California Fire Assistance Agreement 12-hour minimum. After the 12-hours are completed, reimbursement will begin at the time the order under the California Fire Assistance Agreement was initiated. The 12-hour period shall be subject to annual review and monitoring by the California Fire Assistance Agreement Committee.

A-7. An Administrative Rate will be added to the total of the personnel, fire engine, support equipment, and other approved reimbursements for local government. The Base Administrative Rate is set annually by the Committee per the rate letter published at the time of dispatch, unless the California Fire and Rescue Mutual Aid System Agency submits an agency-specific administrative rate in accordance with the Instructions for Completing Actual Administrative Rate Calculations. Cal OES will issue these instructions annually along with the salary survey instructions. California Fire and Rescue Mutual Aid System Agencies that develop an Actual Administrative Rate must review and update their rate by July 1 of each year.

## REIMBURSEMENT – PERSONNEL

A-8. A committee will establish a standard reimbursement formula for local agency personnel with Base Rates applicable to all jurisdictions. The default reimbursement will be at the Base Rate for actual hours worked on the incident. Agencies can be reimbursed at a rate that is higher than the Base Rate, and/or for more than actual hours worked (up to 24 hours per day), as follows:

A-8.1 Any agency seeking reimbursement for its personnel at a rate higher than the appropriate Base Rate, must complete the annual salary survey and file it with the Cal OES Fire and Rescue Division. The Chief Financial Officer will provide verification that the personnel wages exceed the Base Rate for each requested position.

A-8.2 Any agency seeking reimbursement for personnel for more than actual hours worked on the incident (portal-to-portal) must file an MOU/MOA, governing body resolution, or equivalent with Cal OES Fire and Rescue Division. The MOU/MOA, governing body resolution, or equivalent shall indicate how personnel will be compensated.

A-8.3 Any agency seeking reimbursement for its supplemental personnel will accept rates as outlined in **NWCG#004-2009, Attachment D**, which states that supplemental personnel will be reimbursed using General Schedule tables with locality pay applied for actual hours worked. Reimbursement shall be in accordance with Clause A-16.

A-9. The above required documentation for rates and hours shall be based on actual costs to the responding agency, and not contingent upon reimbursement from the State of California or Federal Fire Agencies at a rate that exceeds what the agency will pay its personnel. Reimbursements will be based on the salary survey and any applicable MOU/MOA, governing body resolution, or equivalent that is on file at the time of the initial dispatch.

Any MOU/MOA, governing body resolution, or equivalent is subject to review by the Committee. Local government will be formally notified of the determination.

A-10. These formulas and rates of payment shall constitute full reimbursement for direct costs, including back fill to local jurisdictions relative to personnel provided. Liability for workers compensation claims and/or payment of unemployment benefits shall remain the responsibility of the responding local, state, federal, and tribal agencies that directly employ the personnel. All calculations shall be subject to audit by the State of California or the Federal Fire Agencies in accordance with Recital 29, Examination and Audit.

A-11. Reimbursement for fractional hours shall be taken to the next quarter hour.

A-12. Reimbursement shall be made only for such personnel that have been specifically requested or approved by the State of California or the Federal Fire Agencies. Any personnel not given an Order/Request number shall be considered a voluntary contribution from the responding agency and not subject to reimbursement.

**Formula for Personnel Reimbursement Using Base Rates**

A-13. California Fire and Rescue Mutual Aid System Agencies will be reimbursed at the established Engine Company Base Rate for personnel responding on emergency apparatus or as overhead personnel at or below the Strike Team/Task Force Leader Trainee level. Strike Team/Task Force/Unit Leader level or above personnel will be reimbursed at the established Overhead Base Rate.

A-14. California Fire and Rescue Mutual Aid System Agencies that have not submitted a Salary Survey for rates above the established Base Rates will be reimbursed using one of the following formulas:

**The formula for the total invoice claim with an MOU/MOA, governing body resolution, or equivalent for all hours (portal to portal) is:**
$[(B \times H^1) + (B \times H^1 \times W) + (B \times H^1 \times U)]$ = Total Personnel Reimbursement
*(approved form)*

**The formula for the total invoice claim without an MOU/MOA, governing body resolution, or equivalent for all hours (actual hours) is:**

$[(B \times H^2) + (B \times H^2 \times W) + (B \times H^2 \times U)]$ = Total Reimbursement
*(approved form)*

B= Base Rate
$H^1$ = All Hours (portal to portal)
$H^2$= Actual Hours Worked
W= Workers' Compensation Percentage Rate
U= State Unemployment Percentage Rate

The Established Base Rate (**B**) is based on the average of the CAL FIRE Fire Captain or Fire Apparatus Engineer base rates and the USDA Forest Service emergency hire rates for these positions applied to a 168 hour week, with 40 hours at straight-time and 128 hours at overtime. The total amount is then divided by 168 hours resulting in a blended rate.

**Formula for Establishing the Base Rates**

The following base rate formulas include an overtime component. As a result, the formulas will NOT be calculated at time and one half.

**Base Rate formula for Engine Company personnel and Overhead at or below Strike Team/Task Force Leader Trainee**
(AD-F + CAL FIRE Fire Apparatus Engineer base rate) / 2 = Combined Rate,
((Combined Rate x 40 Hours Straight Time) + (Combined Rate x 128 Hours Overtime)) / 168 = Base Rate

Numerical Calculation: 23.28 + 17.88 = 41.16 / 2 = 20.58, ((20.58 x 40) + (20.58 x 1.5 x 128)) = 4774.56 / 168 = $28.42

**Base Rate formula for Overhead at or above Strike Team Leader/Task Force Leader**
(AD-H + CAL FIRE Fire Captain base rate) / 2 = Combined Rate,
((Combined Rate x 40 Hours Straight Time) + (Combined Rate x 128 Hours Overtime)) / 168 = Base Rate

Numerical Calculation: 28.44 + 22.20 = 50.64 / 2 = 25.32, ((25.32 x 40) + (25.32 x 1.5 x 128)) = 5874.24 / 168 = $34.97

**Definitions for abbreviations used in Base Rate Formula**

AD - Administratively Determined Pay Plan for Emergency Workers. Pay rates for emergency (casual) employees of the Federal Fire Agencies.
AD F - The classification is Engine Boss.
AD H - The classification is Strike Team Leader.
CAL FIRE base Fire Captain and Fire Apparatus Engineer salary rates are converted to hourly rates.

**Formula for Suppression Personnel Reimbursement Using Average Actual Rates**

A-15. The California Fire and Rescue Mutual Aid System Agencies may submit Average Actual Rates to Cal OES Fire and Rescue Division for any personnel dispatched to an incident. The personnel who are dispatched to an incident will first be classified and reimbursed as described in Clauses A-15.1 through A-15.3. The submission of Average Actual Rates shall be on file with Cal OES Fire and Rescue Division prior to the time of personnel dispatch.

A-15.1 California Fire and Rescue Mutual Aid System Agencies that have submitted Average Actual Rates to Cal OES Fire and Rescue Division at or below the Battalion Chief level shall be reimbursed using one of the following formulas:

**The formula for the total invoice claim with an MOU/MOA, governing body resolution, or equivalent for all hours (portal to portal) is:**
$[(A \times H^1 \times 1.5) + (A \times H^1 \times 1.5 \times W) + (A \times H^1 \times 1.5 \times U)]$ = Total Reimbursement
*(approved form)*

**The formula for the total invoice claim without an MOU/MOA, governing body resolution, or equivalent for all hours (actual hours) is:**
$[(A \times H^2 \times 1.5) + (A \times H^2 \times 1.5 \times W) + (A \times H^2 \times 1.5 \times U)]$ = Total Reimbursement
*(approved form)*

A= Average Actual Rate
$H^1$ = All Hours (portal to portal)
$H^2$= Actual Hours Worked
W= Workers' Compensation Percentage Rate
U= State Unemployment Percentage Rate

The Average Actual Hourly Rate (**A**) is the average hourly rate of all personnel in the specific rank (e.g.: Captain, Engineer, Firefighter) within each individual jurisdiction.

A-15.2 California Fire and Rescue Mutual Aid System Agencies that have submitted Average Actual Rates to Cal OES Fire and Rescue Division above the Battalion Chief level shall be reimbursed using the following formulas:

**The formula for the total invoice claim with an MOU/MOA, governing body resolution, or equivalent for all hours (portal to portal) is:**
$[(A \times H^1) + (A \times H^1 \times W) + (A \times H^1 \times U)]$ = Total Reimbursement
*(approved form)*

**The formula for the total invoice claim without an MOU/MOA, governing body resolution, or equivalent for all hours (actual hours) is:**
$[(A \times H^2) + (A \times H^2 \times W) + (A \times H^2 \times U)]$ = Total Reimbursement
*(approved form)*

A = Average Actual Rate
$H^1$ = All Hours (portal to portal)
$H^2$ = Actual Hours Worked
W = Workers' Compensation Percentage Rate
U = State Unemployment Percentage Rate

A-15.3 If personnel above the Battalion Chief level have an MOU/MOA, governing body resolution, or equivalent that indicates they are to be paid above straight time, the reimbursement will be calculated using one of the following formulas. The MOU/MOA, governing body resolution, or equivalent is subject to the provisions in Clause A-9, and must not be contingent on this Agreement or executed on the sole basis that there is reimbursement from Cal OES, CAL FIRE, or the Federal Fire Agencies.

**The formula for the total invoice claim with an MOU/MOA, governing body resolution, or equivalent for all hours (portal to portal) and MOU/MOA, governing body resolution, or equivalent for above straight-time is:**
$[(A \times H^1 \times 1.5) + (A \times H^1 \times 1.5 \times W) + (A \times H^1 \times 1.5 \times U)]$ = Total Reimbursement
*(approved form)*

**The formula for the total invoice claim without an MOU/MOA, governing body resolution, or equivalent for all hours (actual hours) and with an MOU/MOA, governing body resolution, or equivalent for above straight-time is:**
$[(A \times H^2 \times 1.5) + (A \times H^2 \times 1.5 \times W) + (A \times H^2 \times 1.5 \times U)]$ = Total Reimbursement
*(approved form)*

A = Average Actual Rate
$H^1$ = All Hours (portal to portal)
$H^2$ = Actual Hours Worked
W = Workers' Compensation Percentage Rate
U = State Unemployment Percentage Rate

**Formula for Non-Suppression Personnel Reimbursement Using Average Actual Rates**

A-15.4 California Fire and Rescue Mutual Aid System Agencies that have submitted Average Actual Rates to Cal OES Fire and Rescue Division for Non-Suppression Personnel shall be reimbursed for actual hours worked using the following formula:

**The formula for the total invoice claim without an MOU/MOA, governing body resolution, or equivalent for all hours (actual hours) is:**
$[(A \times 1.5 \times H^2) + (A \times 1.5 \times H^2 \times W) + (A \times 1.5 \times H^2 \times U)]$ = Total Reimbursement
*(approved form)*

A = Average Actual Rate
$H^2$ = Actual Hours Worked
W = Workers' Compensation Percentage Rate
U = State Unemployment Percentage Rate

The Average Actual Rate (**A**) is the average hourly rate of all personnel in the specific rank (e.g., Dispatcher, Heavy Equipment Mechanic, and Inspector) within each individual fire agency.

Non-Suppression Personnel, who have an MOU/MOA, governing body resolution, or equivalent that indicates they are to be paid portal to portal according to Clause A-8.2, will be reimbursed in accordance with the following Formula for Personnel Using Average Actual Rates:

**The formula for the total invoice claim with an MOU/MOA, governing body resolution, or equivalent for all hours (portal to portal) is:**
$[(A \times H^1 \times 1.5) + (A \times H^1 \times 1.5 \times W) + (A \times H^1 \times 1.5 \times U)]$ = Total Reimbursement
*(Approved form)*

A= Average Actual Rate
$H^1$ = All Hours (portal to portal)
W= Workers' Compensation Percentage Rate
U= State Unemployment Percentage Rate

The Average Actual Hourly Rate (**A**) is the average hourly rate of all personnel in the specific rank (e.g., Dispatcher, Mechanic, and Inspector) within each individual jurisdiction.

The 1.5 multiplier in the formula represents an hourly rate, which includes benefits for straight time, and an overtime rate for overtime hours.

**Supplemental Fire Department Resource Reimbursement Using NWCG#004-2009**

A-16. California Fire and Rescue Mutual Aid System Agencies seeking reimbursement for Supplemental Fire Department Resources will accept rates as outlined in **NWCG#004-2009, Attachment D**, which states that Supplemental Fire Department Resources will be reimbursed using General Schedule tables with locality pay applied for actual hours worked. California Fire and Rescue Mutual Aid System Agencies that roster or sponsor Supplemental Fire Department Resources shall be reimbursed at the rate of the position being filled on the incident.

California Fire and Rescue Mutual Aid System Agencies shall identify their Supplemental Fire Department Resources separately on the Supplemental Fire Department Resource section of the Cal OES Salary Survey and not include them under the Suppression responder categories. They are not a permanent part of the local fire organization. They are mobilized primarily for response to incidents/wildland fires outside of the fire agency's jurisdiction.

Supplemental Fire Department Resources shall be paid a regular compensation rate for all hours worked plus an overtime compensation rate for actual overtime hours worked, including travel. Base hourly rate shall be no more than step 5 of the appropriate GS wage adjusted for locality pay at the location of the fire department's jurisdiction. Rates can be found on the Office of

Personnel Management website, http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2015/general-schedule/. Reimbursement costs shall not include portal to portal pay or the employee portion of benefits. Backfill is not reimbursable for personnel hired as Supplemental Fire Department Resource. Approved travel costs will be in accordance with Clause A-33.

**Engine Company and Tactical Water Tender Staffing**

A-17. Engine company staffing shall not be less than three (3) or a reimbursable maximum of four (4). The State of California or the Federal Fire Agencies will reimburse based on the actual classifications responding, not to exceed one Company Officer, one Apparatus Operator, and one or two Firefighters. Tactical water tender staffing shall be reimbursed based upon the actual classifications responding, not to exceed two Apparatus Operators or one Company Officer and one Firefighter. Personnel filling Engine Company or tactical water tender positions shall be certified at the appropriate level per Wildland Fire Qualification NWCG 310-1 Sub System Guide, or the California Incident Command Certification System (CICCS).

**Strike Team/Task Force Leader Trainee**

A-18. The State of California or the Federal Fire Agencies shall provide reimbursement for personnel requested by the State of California or the Federal Fire Agencies to coordinate (Strike Team/Task Force Leaders) or otherwise support the California Fire and Rescue Mutual Aid System resources, or Cal OES-owned emergency apparatus used on incidents. A strike team/task force may, at the discretion of the local jurisdiction, include a Strike Team/Task Force Leader Trainee as a reimbursable member of the unit. The Trainee will be covered under a strike team/task force order-request number and will be identified on a separate Cal OES Emergency Activity Record (F-42), unless the Trainee is from the same California Fire and Rescue Mutual Aid System Agency as the Strike Team Leader. The Strike Team/Task Force Leader Trainee shall travel with the strike team/task force in a vehicle from the existing strike team/task force and will not be reimbursed for the use of a second vehicle. The Trainee may provide the vehicle for the assignment, but no more than one vehicle will be reimbursed. Personnel filling Strike Team/Task Force Leader Trainee positions shall be certified at the Strike Team/Task Force Leader Trainee level per Wildland Fire Qualification NWCG 310-1 Sub System Guide, or CICCS.

A-19. All Trainees will follow the qualification process in place at the incident.

**Overhead Personnel**

A-20. Personnel responding to a State of California or Federal Fire Agency's request for overhead positions shall meet the training and experience requirements established for the ICS position to be filled (Reference: NWCG 310-1 Sub System Guide or CICCS).

A-21. Requesting State of California or Federal Fire Agencies shall specify the mode of transportation for overhead personnel at the time of request. Reimbursement for travel shall be from local home unit or residence, whichever is less, using the most economical mode of transportation. Transportation may be arranged and shall be reimbursed/paid by the State of California or Federal Fire Agency.

**Transfer/Reassignment to Other Operational Areas/Incidents**

A-22. California Fire and Rescue Mutual Aid System emergency apparatus and personnel requested through this Agreement may not be reassigned to a different incident in another Cal OES Operational Area, or to another incident through a different Agreement without the responding agency's approval. The host State of California or Federal Fire Agency shall secure approval for such reassignment through the California Fire and Rescue Mutual Aid System.

**Cal OES Support**

A-23. Cal OES Fire Agency Representatives assigned to major incidents may need to have a Cal OES Support/Communications Unit to facilitate coordinating the mutual aid resources assigned to the incident. Staffing level for this resource shall be limited to a maximum of two (2) persons. Staff reimbursement will be based on the appropriate rate.

## REIMBURSEMENT – EMERGENCY APPARATUS

A-24. The formulas and rates of payment for emergency apparatus shall be considered as covering all reimbursement related to the use of such vehicles except as provided in the Reimbursement of Emergency Apparatus Loss or Damage section in the Recitals of this Agreement, Recitals 25 through 27.

A-25. Reimbursement for emergency apparatus refurbishment and rehab may be approved by the Incident Command, up to a maximum of 2 hours, as appropriate.

**California Fire and Rescue Mutual Aid System Agency Emergency Apparatus**

A-26. Engines and Tactical Water Tenders shall be reimbursed in accordance with the current FEMA Schedule of Equipment Rates established in the Annual Rate Letter. Engines and Tactical Water Tenders rates are based on a 16-hour maximum allowable charge, per 24-hour period.

Reimbursement of other emergency response equipment shall be in accordance with 44 CFR 206.228 allowable costs.

A-27. California Fire and Rescue Mutual Aid System Agencies shall assume operational costs, including necessary motor fuels and lubricants used in its emergency apparatus while responding to and returning from the State of California or Federal Fire Agency incidents. It shall be the responsibility of the responding jurisdiction to provide the necessary means of payment for such costs.

A-28. Once at the incident and until released, the State of California or the Federal Fire Agencies will provide for motor fuel and lubricants, normal servicing costs, and minor repairs incidental to operation of emergency apparatus including California Fire and Rescue Mutual Aid System Agency support equipment. Minor Repair is defined as any repair necessary to keep the equipment in operation on the fire, which requires not more than two hours (labor time only) for one mechanic for any one job, exclusive of obtaining parts.

**Support Equipment, Privately-Owned Vehicles, and Rental Vehicles**

A-29. The State of California or the Federal Fire Agencies shall reimburse California Fire and Rescue Mutual Aid System Agencies for use of agency support equipment and private vehicles provided in conjunction with requested personnel. Reimbursement shall be calculated on a daily basis for local jurisdiction support equipment at the rate established by the Committee for the type or category of vehicle used. Privately-owned vehicle rates will be reimbursed on a per mile basis according to the current Internal Revenue Service (IRS) standard rate for business miles.

A-30. In no case will a second support vehicle, privately-owned vehicle, or rental vehicle assigned to an individual, strike team, or task force be reimbursed.

A-31. Authorized Rental Vehicles: The use and reimbursement of rental vehicles requires authorization either at the time of the initial request in ROSS, or documented by written approval at the incident. The dispatch/mobilization centers for the requesting State of California or Federal Fire Agencies may make arrangements for procuring rental vehicles, or may direct the California Fire and Rescue Mutual Aid System Agency to make their own arrangements. Rental vehicles from an airport are discouraged and the use of economy cars is encouraged. Rental vehicles and the fuel expense while responding to, during, or returning from a State of California or Federal Fire Agency incident will be reimbursed for the actual costs incurred by the California Fire and Rescue Mutual Aid System Agencies. The process to obtain reimbursement for rental vehicle expenses is outlined in Exhibit "H".

**Other Equipment Rates (Excluding Aviation)**

A-32. All other equipment not identified specifically in this exhibit will be reimbursed using the FEMA Schedule of Equipment rates. If a FEMA equipment rate is not identified for the type of equipment being used, a rate may be developed using the FEMA equipment rate formula in Exhibit “F”.

## REIMBURSEMENT – TRAVEL EXPENSES

A-33. At no time will the California Fire and Rescue Mutual Aid System Agencies seek reimbursement for travel expenses such as fuel, food, and lodging responding to, during, or returning from a State of California or Federal Fire Agency incident unless formally documented and approved in writing at the incident. The reimbursement of meals to and from the incident will be subject to the California state standard per diem and lodging rates specified in Exhibit “H”.

Travel arrangements and reimbursement, including travel for relieving personnel and backfill, will only be made from the Fire Department/Agency location or residence whichever is closest to the incident or reporting location (such as staging).

If formally documented and approved in writing at the incident, the process to obtain reimbursement for in state travel and incident-related expenses is outlined in Exhibit “H”.

## REIMBURSEMENT – PERSONNEL ROTATION

A-34. When California Fire and Rescue Mutual Aid System Agency personnel are committed to extended assignments under this Agreement, there may be a need to rotate and replace personnel. Personnel under this Agreement are expected to be available a minimum of seven days (elapsed time) excluding travel, before needing replacement, regardless of the number of assignments from original dispatch.

Expenses that are reimbursable are limited to personnel costs and transportation costs. Reimbursement for personnel will be in accordance with general personnel reimbursement provisions of this Agreement. Please reference Exhibit C for specific personnel rotation procedures.

## INCIDENT OFF-SHIFT REST AND SLEEPING ACCOMODATIONS

A-35. The responsible State of California or Federal Fire Agency will provide, when practical, shaded and/or climatically maintained accommodations for off shift sleeping, rest, and recuperation for local jurisdiction resources confined to the incident base. If the incident command finds it operationally feasible (e.g. strike team remains available) to place local jurisdiction resources in a commercial sleeping accommodation, it may be provided by the Federal Fire Agencies and CAL FIRE.

**REIMBURSEMENT- STATE OF CALIFORNIA, FEDERAL, DOD, AND TRIBAL FIRE DEPARTMENTS**

A-36. State Agency Fire Departments, Federal Fire Departments, DOD Fire Departments, and Tribal Fire Departments may respond through the California Fire and Rescue Mutual Aid System. Tribal Fire Department's that have a compacted or contracted wildland fire program from BIA will respond through the Federal Dispatching System and not through the California Fire and Rescue Mutual Aid System.

State Agency Fire Department personnel will be reimbursed in accordance with reimbursement provisions for local jurisdictions except that the base rate provisions will not apply to inmate firefighters. Inmate firefighters will be reimbursed at their actual straight time rate in accordance with California Department of Corrections payment practices.

Reimbursement of Federal, DOD, and Tribal Fire Departments that respond to CAL FIRE fires will be in accordance with the reimbursement provisions for local jurisdictions.

Reimbursement of Federal, DOD, and Tribal Fire Departments that respond to Federal Fire Agency fires are governed by other federal agreements. In these cases Cal OES will not produce or process reimbursement invoices for DOD and Tribal Fire Departments. DOD Fire Departments responding under this Agreement will invoice the supported Federal Fire Agency directly in accordance with existing federal and local agreements. Tribal Fire Departments responding under this Agreement will invoice the BIA directly in accordance with existing federal or local Agreements.

**REQUESTING REIMBURSEMENT**

A-37. California Fire and Rescue Mutual Aid System Agencies will prepare a Cal OES Form F-42, F-78 or other approved form and supporting documentation at the incident, which is the basis for reimbursement due and invoice preparation. These forms are provided by Cal OES Fire and Rescue Division. The Form (F-42/F-78 or other approved form) must be signed by a responsible officer of the jurisdiction seeking reimbursement and by the State of California or Federal Fire Agency Incident Command to verify that the resources requested on the F-42/F-78 or other approved form were authorized by the ordering agency and is the initial step for invoice processing. The completed F-42/F-78 or other approved form is forwarded to Cal OES Fire and Rescue Division Headquarters for processing. **FORMS F-42/F-78 or other approved form should be submitted to the Cal OES Fire Agency Representative at the incident. In the absence of a Cal OES Fire Agency Representative, FORMS**

**F-42/F-78 or other approved form should be SUBMITTED TO Cal OES FIRE AND RESCUE DIVISION BY THE CALIFORNIA FIRE AND RESCUE MUTUAL AID SYSTEM AGENCY WITHIN 30 CALENDAR DAYS OF RELEASE FROM THE INCIDENT OR PAYMENT WILL BE DELAYED.**

A-38. Within 60 calendar days of receipt of the F-42/F-78 or other approved form, Cal OES Fire and Rescue Division will process the F-42/F-78 or other approved form data into invoices (F-142) and return to the California Fire and Rescue Mutual Aid System Agency for verification of billing amounts and signature. **THERE WILL BE A DELAY IN PAYMENT FOR INVOICES (F-142) NOT RETURNED TO Cal OES FIRE AND RESCUE DIVISION WITHIN 30 CALENDAR DAYS OF RECEIPT FOR VERIFICATION OF BILLING AMOUNTS AND SIGNATURE.**

A-39. Upon return receipt and verification of the invoice (F-142) by the California Fire and Rescue Mutual Aid System Agency, Cal OES Fire and Rescue Division will forward the invoice (F-142) to the appropriate State of California or Federal Fire Agency within 30 calendar days along with a copy of the F-42/F-78 or other approved form as the source document. Inquiries from the State of California and Federal Fire Agencies regarding amounts billed will first be addressed to Cal OES Fire and Rescue Division as soon as possible, as the first step in a joint resolution process.

A-40. The State of California or Federal Fire Agency will remit payment to the California Fire and Rescue Mutual Aid System Agency within 60 calendar days of receipt of invoice (F-142) from Cal OES.

A-41. In the event that CAL FIRE or a Federal Fire Agency identifies a discrepancy with an invoice (F-142), Cal OES will provide the California Fire and Rescue Mutual Aid System Agency a new invoice with the corrected invoice amount and the reason for the change. Cal OES has 30 calendar days to make the change and provide a corrected invoice to the California Fire and Rescue Mutual Aid System Agency and either CAL FIRE or the appropriate Federal Fire Agency.

A-42. CAL FIRE or the Federal Fire Agency will provide copies of payment schedules to Cal OES for invoices (F-142s) CAL FIRE or the Federal Fire Agency has paid within 60 calendar days of remittance to the California Fire and Rescue Mutual Aid System Agency. Cal OES Fire and Rescue Division will reconcile the payment schedules against outstanding invoices (F-142s) on a monthly basis.

A-43. Cal OES will form and chair working groups with membership from the Committee to develop methodologies to streamline the reimbursement process.

The State of California and Federal Fire Agencies will work on procedures to improve reimbursement timelines. These activities will be documented and shared with the California Fire and Rescue Mutual Aid System Agencies.

A-44. The Terms and Conditions and Exhibits in this Agreement may necessitate new methods of reporting and invoicing. All proposed changes to this Agreement, or associated business processes shall be approved by the State of California or Federal Fire Agencies that are parties to this Agreement.

A-45. Reimbursement for emergency apparatus and personnel shall be made directly to the California Fire and Rescue Mutual Aid Agency providing the resource, and **NOT** to individuals.

**Federal Agency Electronic Fund Transfer**

A-46. Federal agencies require the following for reimbursement to California Fire and Rescue Mutual Aid System Agencies:

a) Taxpayer Identification Number (TIN) – This number is applied for and issued by the Internal Revenue Service (IRS). Contact the IRS @ www.irs.gov or (800) 772-1213.
b) Electronic Funds Transfer (EFT) – The cooperator shall designate a financial institution or an authorized payment agent through which a federal payment may be made in accordance with US Treasury Regulations, Money and Finance at 31 CFR 208, which requires that federal payments are to be made by EFT to the maximum extent possible. A waiver may be requested and payments received by check by certifying in writing that one of the following situations apply:

   a. The payment recipient does not have an account at a financial institution.
   b. EFT creates a financial hardship because direct deposit will cost the payment recipient more than receiving the check.
   c. The payment recipient has a physical or mental disability, or a geographic language, or literacy barrier.

   In order to receive EFT payments, the recipient/cooperator shall register in the System for Award Management (SAM). You may register by going to www.sam.gov and follow the instructions provided on-line. For assistance, contact the SAM Assistance Center at (800) 606-8220.

c) DUNS Number – The cooperator shall obtain a Dunn and Bradstreet Data Universal Numbering System (DUNS). This is a requirement for registering in SAM. The DUNS number does not replace existing numbers, such as Employer Identification Number (EIN), the Tax Identification Number (TIN), and State Application Identifier (SAI) numbers that are required by statute, Executive Order, or regulation. You may obtain a DUNS number by contacting Dun & Bradstreet via the web at www.dunandbradstreet.com or by phone at (800) 234-3867 or (866) 794-1580. A DUNS number will be provided immediately by telephone at no charge.

# EXHIBIT "B"
# ICS Type 3, 4, 5, 6, & 7 ENGINE, EQUIPMENT, PERSONNEL, & TRAINING STANDARDS FOR FIRE AND EMERGENCY ASSISTANCE

The purpose of this Exhibit is to identify the minimum standards that California Fire and Rescue Mutual Aid System Agencies should follow with regard to their use of Type 3 through 7 engines, equipment, personnel, and training standards for mutual aid and/or CFAA-reimbursable responses.

The State of California or the Federal Fire Agency Type 3 through 7 Engines have a number of features that enhance their capability to operate on narrow, steep or unimproved roads and to allow the efficient application of water or other agents. The minimum features of the engines are:

- Short Wheel Base
- High Ground Clearance
- High angle of approach & departure
- Lower Gross Vehicle Weight (GVW) than Type 1 or 2 engine
- Engine unit # on roof

Engine Protection Line:
**This hose is intended for engine protection and is not to be used for other purposes.** Alternatives to meet this include:

- Live reel with a minimum of 150 feet of hard rubber hose, not less than three-fourths (3/4) inch inside diameter, or a;
- Hose tray/basket containing a minimum of 150 feet of 1inch National Pipe Straight Hose also known as "iron pipe" threaded fittings (NPSH) or 1-1/2 inch National Hose (NH) cotton/synthetic lined hose, with a combination nozzle, and the hose shall be configured for immediate deployment. Hose shall be connected to the water supply and fully charged. The 150 feet of hose specified here is in addition to the hose specified under components.

The fire engine must be equipped with baffles that reduce the shifting of the water load. Most engines should meet this NFPA standard; however, this requirement is also applicable to all water tenders.

The main fire pump and water tank shall meet minimum capabilities for the FIRESCOPE ICS Type engine as designated in the current edition of the ICS Field Operations Guide ICS-420-1. The pump, as mounted, shall be capable of drafting water from a water source located 15 feet vertical distance below the pump through the required suction hose.

All engines will have pump and roll capabilities for mobile attack on fire line utilizing a 1.5 inch hose with a 1.5 inch combination nozzle.

- In addition to live reel hose or hose tray/basket hose:1.5 inch hose will be configured to facilitate progressive hose deployment providing for a l00 foot lateral of 1 inch hose every 200 feet of 1.5 inch trunk line once the fire's edge is encountered.
- All hose utilized must meet or exceed USDA Specification 5100-186b. One-inch hoses and nozzles will have NPSH; 1inch hose with NH threads shall be provided with a sufficient number of NPSH adapters. One and one-half inch hoses and nozzles will have NH threads with 9 threads per inch.

| **Minimum Engine Equipment InventoryComponents** | **Engine Type** | | | | |
|---|---|---|---|---|---|
| | **3** | **4** | **5** | **6** | **7** |
| **Engine Requirements** | | | | | |
| Tank Minimum Capacity (gal) | 500 | 750 | 400 | 150 | 50 |
| Pump Minimum Flow (gpm) | 150 | 50 | 50 | 50 | 10 |
| At Rated Pressure (psi) | 250 | 100 | 100 | 100 | 100 |
| Pump & Roll | Yes | Yes | Yes | Yes | Yes |
| Max GVWR (lbs) | | | 26,000 | 19,500 | 14,000 |
| **Personnel** | | | | | |
| Minimum Personnel | 3 | 3 | 3 | 3 | 3 |
| **Hose Requirements** | | | | | |
| Hose 1.5” | 1000 | 300 | 300 | 300 | 0 |
| Hose 1” | 500 | 300 | 300 | 300 | 200 |
| Hard Suction Hose 8’ or 10’ | 2 | 2 | 2 | 2 | 2 |
| Fill Hose 1.5” x 15’ | 1 | 1 | 1 | 1 | 1 |
| Booster Line min 3/4 inch | 100 | 100 | 100 | 100 | 100 |
| **Firefighting Equipment** | | | | | |
| Shovels | 2 | 2 | 2 | 2 | 2 |
| Pulaskis | 2 | 2 | 2 | 2 | 2 |
| McLeod or Combo tool | 2 | 1 | 1 | 1 | 1 |
| Chainsaw with tool kit | 1 | 1 | 1 | 1 | 1 |
| Hose Clamp 1.5” | 2 | 2 | 2 | 2 | 1 |
| Spanner Wrench 1.5” & 1” | 2 | 2 | 2 | 2 | 1 |
| Hydrant Wrench Adjustable | 1 | 1 | 1 | 1 | 1 |
| Adaptor 1.5” NH to 1.5” NPSH | 1 | 1 | 1 | 1 | 1 |
| Adaptor 1.5” NPSH to 1.5” NH | 1 | 1 | 1 | 1 | 1 |
| Double male 1.5” NH | 1 | 1 | 1 | 1 | 1 |

| **Components** | **Engine Type** | | | | |
|---|---|---|---|---|---|
| | **3** | **4** | **5** | **6** | **7** |
| **Firefighting Equipment** | | | | | |
| Double female 1.5" NH | 1 | 1 | 1 | 1 | 1 |
| Double male 1" NPSH | 1 | 1 | 1 | 1 | 1 |
| Double female 1" NPSH | 1 | 1 | 1 | 1 | 1 |
| Gated Hose Tees, 1.5" NH x 1.5" NH x 1" NPSH | 4 | 2 | 2 | 2 | 2 |
| Gated Wyes 1.5" NH x 1.5" NH x 1.5" NH | 2 | 1 | 1 | 1 | 1 |
| Reducers/adaptors 1.5" NH to 1" NPSH | 2 | 1 | 1 | 1 | 1 |
| Nozzle 1.5" Wildland, Adjustable | 4 | 2 | 2 | 2 | 2 |
| Nozzle 1" Wildland, Adjustable | 4 | 2 | 2 | 2 | 2 |
| Class A Foam, 5- gallons | 1 | 1 | 1 | 1 | 1 |
| Drip Torch or Fusees (case) | 1 | 1 | 1 | 1 | 1 |
| Backpack pump, 5-Gallons | 2 | 2 | 2 | 2 | 2 |
| Chock Blocks | 1 | 1 | 1 | 1 | 1 |
| Inventory List of Engine Equipment | 1 | 1 | 1 | 1 | 1 |
| **Communications** (Programmed per the current edition of the FIRESCOPE Statewide Frequency Channel Plan. Exhibit "D" identifies communications capabilities.) | | | | | |
| Mobile Radio | 1 | 1 | 1 | 1 | 1 |
| Portable Radio (preferred 1/person) | 1 | 1 | 1 | 1 | 1 |
| **Personnel Support** | | | | | |
| Personnel Protection Equipment | As in Ex. "B" | As in Ex. "B" | As in Ex. "B" | As in Ex. "B" | As in Ex. "B" |
| First Aid Kit/Supplies for Engine Personnel | 1 | 1 | 1 | 1 | 1 |
| Drinking Water for Engine Personnel | 24-Hr Supply | 24-Hr Supply | 24-Hr Supply | 24-Hr Supply | 24-Hr Supply |
| Food/Rations for Engine Personnel | 24-Hr Supply | 24-Hr Supply | 24-Hr Supply | 24-Hr Supply | 24-Hr Supply |
| **Other/Misc.** | | | | | |
| Special Tools for Engine/Pump Repair | Specific to Equipment | Specific to Equipment | Specific to Equipment | Specific to Equipment | Specific to Equipment |
| Bolt Cutters | 1 | 1 | 1 | 1 | 1 |
| Fuel Cans/Oils | Specific to Equipment | Specific to Equipment | Specific to Equipment | Specific to Equipment | Specific to Equipment |
| **Other/Misc.** | | | | | |
| Fire Extinguisher 2A10BC | 1 | 1 | 1 | 1 | 1 |
| **Highly Recommended/Desirable Items** | | | | | |
| GPS Unit | 1 | 1 | 1 | 1 | 1 |
| Belt Weather Kit or Other Weather Reading Device | 1 | 1 | 1 | 1 | 1 |
| Portable pump with min. rating of 35 GPM | 1 | 1 | 1 | 1 | 1 |
| Equipment Compliment as identified in the Interagency Standards For Fire and Aviation Operations (Redbook), Chapter 14- Firefighting Equipment, and Appendix M-NUS Engine Stocking Level | Specific to Engine Type | Specific to Engine Type | Specific to Engine Type | Specific to Engine Type | Specific to Engine Type |

## Personal Protective Equipment (PPE)

Each employee responding to or engaged in fire suppression activities will use the appropriate safety clothing and equipment. Each department is responsible for seeing that CAL/OSHA standards for safety clothing and equipment are provided and used for wildland firefighting. Wildland fire suppression safety clothing and equipment includes:

- Safety helmet that meets the minimum standards required by California Code of Regulations (CCR), Title 8, Section 3410
- Goggles, protection that meets the minimum requirements for design, construction and use as required by CCR, Title 8, Sections 3382 and 3404.
- Ear protection to comply with CCR Title 8 Sections 3405 and 3410(c)
- Nomex hood, shroud, or equivalent face and neck protection
- Nomex shirt
- Nomex pants
- Gloves, CAL/OSHA approved for wildland fire fighting
- Safety work boots, heavy-duty, lace-type, with deeply lugged soles and heels, and leather tops at least eight inches in height.
- Headlamps w/spare batteries
- Chain saw chaps for chainsaw operator
- Wildland fire shelter

## Training

The State of California and Federal Fire Agencies have the expectation that when a local jurisdiction strike team/task force arrives at an incident it can perform all of the missions that would be expected of the State of California and Federal Fire Agencies' engine strike teams.

All responding personnel shall be in compliance with the current NWCG 310-1 Sub System Guide or CICCS. Training topics include but are not limited to:

Wildland strategy & tactics
Wildand fire behavior
Wildland hoselays
Wildland fire safety
Fireground communications
Backfiring/Firing-out
Handline construction
Structure triage
Structure defense preparation
Fire weather

# EXHIBIT "C"
# REIMBURSEMENT FOR PERSONNEL ROTATION

Clause A-34 authorizes the reimbursement of personnel and transportation costs incurred to replace California Fire and Rescue Mutual Aid System Agency personnel committed to extended assignments under this Agreement. Personnel under this Agreement are to be available a minimum of seven days excluding travel (portal to portal) before needing replacement, regardless of the number of assignments. This exhibit lists the procedures necessary for a local jurisdiction to follow before reimbursement for their costs will be processed for rotation of their personnel. These procedures only apply when the emergency apparatus remains assigned to the incident but the personnel are rotated. The procedures are:

C-1. The incident commander or MOB center manager to which the resources are assigned must approve the personnel rotation and method of transportation. Such approval should not be denied without substantial cause, e.g. imminent planned release (24 – 36 hours) of the resources, or a negotiated extension through the Cal OES Fire Agency Representative. The personnel rotation and transportation plan must be coordinated through the incident, the ordering point, agency representative, and/or the overhead responsible for the personnel to be rotated.

C-2. The approved personnel rotation will be documented in:

C-2.1. **The approved automated resource ordering and status system of record (ROSS).** The resource order will be annotated in the documentation section to include the following information:

2.1.a. Date and time of approval for the specific personnel rotation.

2.1.b. Names of incoming and outgoing personnel, with identification of home units.

2.1.c. Method, date and time of transportation of both incoming and outgoing personnel.

2.1.d. A new subordinate request to the existing "E" number will be generated by the incident when a separate vehicle will be used in support of a personnel rotation.

2.1.d.1. In the event a new subordinate request cannot be added to the existing "E" number, the incident approval must be documented in the documentation section of the resource order.

C-2.2. **F-42 "Emergency Activity Record"**

2.2.a. Box 12 of the original F-42 will document any personnel rotation with the date and time of the rotation for all individuals whether or not the personnel rotation will be reimbursed.

2.2.b. **ONLY** when a fire agency is requesting reimbursement for an approved personnel rotation that includes transportation cost will a new F-42 be required (Personnel Information, Box 11 & Support Vehicle Information, Box 8 on F-42 and referenced to the original "E" number, Box 12).

2.2.b.1 For approved personnel rotation documented only in the documentation section, a copy of the resource order must be submitted with the F-42.

2.2.c. Invoices (F-142's) will identify personnel involved in any rotation and will itemize the costs of transportation for personnel rotations with support documentation.

C-2.3. **ICS-214 Unit Log**

2.3.a. Details of personnel rotation need to be documented (Unit Logs to be retained on file by individual fire agency).

If both the emergency apparatus and the personnel need replacement, the resources will be released and a new resource will be ordered.

## EXHIBIT "D"
## COMMUNICATIONS CAPABILITIES

It shall be the responsibility of the agency sending mutual aid resources to ensure that those resources have adequate communications capabilities. Adequate communications capability is defined as VHF Highband radios with a minimum of 240 channels and pre-programmed with the most current FIRESCOPE STATEWIDE FREQUENCY CHANNEL PLAN.

Emergency apparatus used for mutual aid will have a mobile VHF Highband radio (powered by the emergency apparatus battery and connected to an external antenna) and a minimum of one portable VHF Highband radio. The VHF Highband portable radio should be capable of being operated by alkaline batteries.

Strike Team/Task Force Leaders: In addition to the communications capability required for emergency apparatus, Strike Team/Task Force Leaders are encouraged to respond with a conventional 800 MHz radio pre-programmed with the 800 MHz mutual aid channels as identified in FIRESCOPE STATEWIDE FREQUENCY CHANNEL PLAN.

For Narrowband Radios: On January 1, 2013, all public safety and business industrial land mobile radio systems operating in the 150-512 MHz radio bands must cease operating using 25 kHz efficiency technology, and begin operating using at least 12.5 kHz efficiency technology. This deadline is the result of an FCC effort that began almost two decades ago to ensure more efficient use of the spectrum and greater spectrum access for public safety and non-public safety users. Migration to 12.5 kHz efficiency technology (once referred to as Refarming, but now referred to as Narrowbanding) will allow the creation of additional channel capacity within the same radio spectrum, and support more users.

After January 1, 2013, licensees not operating at 12.5 KHz efficiency will be in violation of the Commission's rules and could be subject to FCC enforcement action, which may include admonishment, monetary fines, or loss of license. Agencies shall ensure that local radio channels are not utilized outside of the agency's licensed area of operation.

Agencies should provide a minimum of 4 hours of annual basic radio training for Division Supervisors, Strike Team Leaders, and single resource leader positions.

# EXHIBIT "E"
# ICS TACTICAL WATER TENDER, EQUIPMENT, PERSONNEL, AND TRAINING STANDARDS FOR FIRE AND EMERGENCY ASSISTANCE

The purpose of this Exhibit is to identify the minimum standards that California Fire and Rescue Mutual Aid System Agencies should follow in regard to their use of tactical water tender, equipment, personnel, and training standards for mutual aid and/or CFAA reimbursable responses.

The State of California or the Federal Fire Agency tactical water tender has a number of features that enhance its capability to operate on narrow, steep or unimproved roads to allow the efficient distribution of water. The minimum features of the tactical water tender are:

- Short wheelbase
- High ground clearance
- High angle-of-approach & departure
- Engine unit # on roof
- The tactical water tender must be equipped with baffles that reduce the shifting of the water load.
- The fire pump and water tank shall meet minimum capabilities for the FIRESCOPE ICS tactical water tenders as designated in the current edition of the ICS Field Operations Guide ICS-420-1.
- A portable pump, with a minimum rating of 35 GPM is desirable.
- If pump and roll capability is requested, tactical water tenders should utilize a 1.5 inch hose with a 1.5 inch combination nozzle.
- If needed, 4-wheel drive must be requested
- If needed, a class A foam system must be requested
- Live reel hose or hose tray/basket
- Hard suction hose with strainer
- Soft suction hose
- All hose utilized must meet or exceed USDA Specification 5100-186b. One-and-one-half inch hoses and nozzles will have NH threads with 9 threads per inch.

**Recommended Minimum Tactical Water Tender Equipment Inventory**

| | | |
|---|---|---|
| 3 inch fire hose | NH Thread | 300 Feet |
| 1.5 inch fire hose | NH Thread | 200 Feet |
| Shovel | | 1 |
| Adjustable hydrant wrench | | 2 |
| Combination 1-1/2 inch nozzle | | 3 |
| Pulaski | | 1 |

| | |
|---|---|
| McLeod or combination tool | 1 |
| Spanner wrench | 3 |
| Double male, 1.5 inch NH | 1 |
| Double female, 1.5 inch NH | 1 |
| Double male, 2.5 inch NH | 1 |
| Double female, 2.5 inch NH | 1 |
| Reducer/Adapters, 2.5 inch NHF to 1.5 inch NHM | 1 |
| Fusees (case) or drip torch | 1 |
| Water, drinking | 3 gallons |
| First Aid Kit, 5-person | 1 |

Communications 1-mobile radio, minimum 1-portable radios (preferred 1-per assigned personnel). **Programmed per the current edition of the FIRESCOPE Statewide Frequency Channel Plan. Exhibit "D" identifies communications capabilities.

**Personal Protective Equipment (PPE)**

Each employee responding to or engaged in fire suppression activities will use the appropriate safety clothing and equipment. Each department is responsible for seeing that CAL/OSHA standards for safety clothing and equipment are provided and used for wildland firefighting. Wildland fire suppression safety clothing and equipment includes:

- Safety helmet that meets the minimum standards required by California Code of Regulations (CCR), Title 8, Section 3410.
- Goggles, protection that meets the minimum requirements for design, construction and use as required by CCR, Title 8, Sections 3382 and 3404.
- Ear protection to comply with CCR, Title 8, Sections 3405 and 3410(c).
- Nomex hood, shroud, or equivalent face and neck protection.
- Nomex shirt
- Nomex pants
- Gloves, CAL/OSHA approved for wildland firefighting.
- Safety work boots, heavy-duty, lace-type, with deeply lugged soles and heels, and leather tops at least eight inches in height.
- Wildland fire shelter

**Training**

The State of California and Federal Fire Agencies have the expectation that when a local jurisdiction tactical water tender arrives at an incident it can perform all of the missions that the State of California and Federal Fire Agencies' tactical water tenders can.

All responding personnel shall be in compliance with the current NWCG 310-1 Sub System Guide or CICCS. Training topics include but are not limited to:

Wildland strategy & tactics
Wildland fire behavior
Wildland hose lays
Wildland fire safety
Fireground communications
Backfiring/Firing-out
Handline construction
Structure triage
Structure defense preparation
Fire weather

## EXHIBIT "F"
## FEMA EQUIPMENT RATE FORMULA

**Hourly Rate= Depreciation + Overhead + Overhaul Labor + Overhaul Parts + Field Labor +Field Parts + Fuel + Lube + Tires**

Where:
**Depreciation=** (Acquisition Cost – Salvage Value) / Economic Life
Generally Acquisition Cost = (1 – [Discount % / 100]) * (List Price + Sales Tax + Freight Cost)

**Hourly Overhead** = Overhead / 2112 hours
Where Overhead represents annual equipment overhead costs resulting directly from equipment ownership, the costs include such things as normal risk insurance, storage and security, inspection, and licenses. Profit, project overhead, and general overhead costs are not included in this number. 2112 hours is an annual equipment ownership baseline.

**Overhaul Labor** = (Annual Overhaul Labor Hours * Mechanic's Wage) / 2112

**Overhaul Parts** = Annual Overhaul Parts Cost / 2112

**Field Labor** = (Annual Field Repair Labor Hours * Mechanic's Wage) / Average Annual Use Hours

**Field Parts** = (Annual Field Repair Parts Cost + Miscellaneous Supply Parts Cost) / Average Annual Use Hours

**Fuel** = Average Annual Fuel Cost / Average Annual Use Hours
or
**Fuel** = Hourly Fuel Consumption Rate * Unit Cost of Fuel

**Lube** = Annual Lube Cost / Average Annual Use Hours

**Tires** = Tire Cost / Tire Life

** You may also use FEMA's Special Use Equipment Formula at http://www.caloes.ca.gov/FireRescueSite/Pages/Reimbursement.aspx

# EXHIBIT "G"
# REIMBURSEMENT POLICY AND PROCEDURES FOR OUTSIDE THE STATE OF CALIFORNIA ASSIGNMENTS

This Exhibit applies to Cal OES and the Federal Fire Agencies only.

The California Fire and Rescue Mutual Aid System Agencies shall use the following procedures to secure reimbursement for the provision of personnel and local government-owned emergency apparatus ordered for use on Federal incidents outside the State of California.

Reimbursement of personnel, emergency apparatus, and support equipment will be consistent with Exhibit "A" Reimbursement Policy and Procedures with the following exceptions:

1. Travel costs for lodging and per diem for personnel shall be reimbursed at the rates and methods established within Exhibit H, limited to the California State Standard Per Diem Rates in effect at the time of the response. Lodging expense will follow the "all counties/cities located in California" up to $90.00 per night, plus tax. Exceptions will be handled case by case with formal documented and written approval.

2. Reimbursement for Cal OES-owned communications equipment (e.g., cell and satellite phones or air and phone credit cards) will be at the total actual cost to the State of California

3. Reimbursement invoices for Cal OES personnel, travel, and equipment will be on an actual cost basis, supported by accounting records, payroll records, and/or activity cards. Invoices for Cal OES resources should be submitted no later than 5 months after the end of the incident.

4. Invoices for Cal OES resources will include an administrative rate as determined by the State of California under the Office of Management and Budget (OMB) circular A-87.

5. Length of assignments for resources responding to incidents outside the State of California will be consistent with the appropriate Federal Fire Agency's policy. Conditions in Clause A-34 of Exhibit "A" concerning minimum of seven days (elapsed time), excluding travel, will not apply to resources responding to requests outside the State of California. Federal Fire Agency policy on the length of an assignment outside the state is defined as the time period (days) between the first full operational period at the first incident or reporting location on the original resource order and commencement of return travel to the home unit. Standard assignment length is 14 days, exclusive of travel from and to home unit. Time spent in staging and preposition status counts toward the 14 day limit, regardless of pay status, for all personnel, including Incident Management Teams.

## EXHIBIT “H”
## IN-STATE TRAVEL AND INCIDENT RELATED EXPENSES

The purpose of this exhibit is to identify allowable costs and the process for submitting such cost for in-state travel and incident related expenses. This exhibit primarily pertains to costs associated with fuel, food, vehicle and lodging costs as stated in Clauses A-33 and A-35 of Exhibit “A”, as well as attributable incident expenses such as loss or damage to local agency emergency apparatus or support equipment identified in Recital 25 of this Agreement.

In some cases miscellaneous expenses outside of the above mentioned may be approved if the incident finds that the expense(s) is also attributable to the incident.

In order for local agencies to be eligible for reimbursement of expenses related to this exhibit, the approval MUST be formally documented in writing by the approving State of California or Federal Fire Agency responsible for an incident. The formal approval must be documented on a General Message Form ICS-213 with the associated “S#” validating the expense(s). The General Message Form ICS-213 must be signed by either the Finance Section Chief, Incident Business Advisor, or the Incident Commander.

**NOTE:** S#’s should ONLY be issued when the incident cannot accommodate the expense in need, and all other options to provide the expense(s) have been exhausted.

Approved out of pocket expense(s) must accompany the F-42 or F-78 along with the formal approval on the General Message ICS-213 documenting the S#, the itemized receipt(s), and the In State Travel and Incident Related Expense Log. Receipts for meals and incidentals are not required. All other receipts must be taped to an 8 ½ x 11 sheet of paper in date order. All sides of the receipts must be taped and legible; photo copies are preferred.

### Rental Vehicles

Rental vehicles authorized on the resource order do not need additional incident approval. The cost of the rental vehicle, if incurred by the local agency, and the fuel purchased to operate the rental vehicle must be submitted on the In State Travel and Incident Related Expense Log with receipts taped or photo copied. Rental vehicles that are not authorized on the resource order must receive the formal written approval from the incident as identified above.

Check List:

- ☐ General Message Form 213 signed by the Finance Section Chief, Incident Business Advisor, or Incident Commander
- ☐ S# documented on the General Message Form 213
- ☐ F-42 or F-78 or other approved form
- ☐ In-State Travel and Expense Log with expense documented in date order
- ☐ Receipt(s)* taped on all sides to an 8 ½ x 11 sheet of paper in date order (photocopies preferred) *Receipt(s) for meals and incidentals are not required

If costs are associated with food or lodging, the reimbursement will be limited to the California Standard Per Diem Rates in effect at the time of response:

- Breakfast - $7.00
- Lunch - $11.00
- Dinner - $23.00
- Incidentals - $5.00 (only after the first 24 hours)
- Lodging:
  - All Counties/Cities located in California (except as noted below):
    - Actual lodging expense, <u>supported by a receipt</u>, up to $90 per night, plus tax.
  - Napa, Riverside, and Sacramento Counties:
    - Actual lodging expense, <u>supported by a receipt</u>, up to $95 per night, plus tax.
  - Los Angeles, Orange, and Ventura Counties and Edwards AFB, excluding the city of Santa Monica:
    - Actual lodging expense, <u>supported by a receipt</u>, up to $120 per night, plus tax.
  - Alameda, Monterey, San Diego, San Mateo, Santa Clara Counties:
    - Actual lodging expense, <u>supported by a receipt</u>, up to $125 per night, plus tax.
  - San Francisco County and the City of Santa Monica:
    - Actual lodging expense, <u>supported by a receipt</u>, up to $150 per night, plus tax.

Cal OES#___________6051-4
CAL FIRE#______7CA02564
USFS#___I5-FI-11052012-107
NPS#_________P14AC01610
BLM#_________BAA151002
FWS#____FFF300008-15-002
BIA#________A15ACPRO01

California Governor's Office of Emergency Services (Cal OES) - Fire and Rescue Division

## TRAVEL EXPENSE CLAIM REIMBURSEMENT LOG

**Incident Name:** ____________________ **Crew Relief:** Yes ☐ No ☐

| AGENCY DESGN. | | STRIKE TEAM # | | | INCIDENT ORDER NUMBER | | | INCIDENT REQUEST NUMBER | | |
|---|---|---|---|---|---|---|---|---|---|---|
| State | 3-Letter ID | 3-Letter ID | Number | Ltr | State | 3-Letter ID | Number | 3-Letter ID | ID | Number |
| | | | | | | | | | | |

| DATE | MEALS $ | LODGING $ | MISC $ | DESCRIPTION | AMOUNT |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| SUB-TOTALS → | | | | TOTAL AMOUNT → | |

Comments:

DEPARTMENTAL APPROVAL

Print Name: __________ Signature: __________ Date: __________

Cal OES - Fire and Rescue Division - Travel Expense Claim Reimbursement Log (F-142A)    Form F-142A (Rev. Dec2014)

Reimbursement Log at http://www.caloes.ca.gov/FireRescueSite/Pages/Reimbursement.aspx

# EXHIBIT "I"
# DEFINITIONS

1. **ADMINISTRATIVE RATE** shall mean a pre-established percentage charge that may be applied by the billing agency as determined by the CFAA Committee.

2. **AGENCY REPRESENTATIVE** shall mean the ICS position that serves as the point of contact for an assisting or cooperating agency that has been delegated authority to make decisions on matters affecting that agency's participation at the incident and reports to the Liaison Officer.

3. **ANNUAL OPERATING PLAN** shall mean a plan developed at the State, Geographic, or local levels for the implementation of administrative or operational practices or concerns.

4. **ASSISTANCE BY HIRE** shall mean fire suppression resources needed to fill the incident order that are to be paid for by the protecting agency.

5. **BUREAU OF INDIAN AFFAIRS** shall mean a federal bureau under the Department of the Interior charged with the responsibility to provide wildland fire protection and suppression for trust lands of federally recognized Native American Tribes.

6. **CALIFORNIA FIRE AND RESCUE MUTUAL AID SYSTEM AGENCIES** shall mean agencies, departments, or institutions to which Cal OES has, through agreement, assigned Cal OES-owned emergency apparatus; or who provide locally owned resources under provisions of the California Fire and Rescue Mutual Aid System. These agencies may also be referenced as, however, not be limited to, "local government" or "local agency".
7. **CALIFORNIA MOBILIZATION GUIDE** shall mean the interagency procedures for requesting, documenting, and sending resources to incidents within the State of California.

8. **CALIFORNIA WILDLAND COORDINATING GROUP** shall mean the executive level interagency committee made up of representatives from the USDA Forest Service, California Department of Forestry and Fire Protection, USDI Bureau of Land Management, USDI National Park Service, USDI Bureau of Indian Affairs, USDI Fish and Wildlife Services, contract counties representative, and the California Governor's Office of Emergency Services.

9. **DEMOBILIZATION CENTER/FACILITY** shall mean that location or facility established at or near an incident for the processing of emergency apparatus and personnel prior to release to its home base.

10. **DEPARTMENT OF DEFENSE FIRE DEPARTMENT** shall mean any organization managed by the Department of Defense for preventing and putting out fires principally on military installations.

11. **EMERGENCY APPARATUS** shall mean any emergency response equipment or apparatus provided through the California Fire and Rescue Mutual Aid System.

12. **EMERGENCY PERSONNEL** shall mean any personnel responding on or with emergency apparatus and requested overhead personnel.

13. **FEDERAL FIRE AGENCIES** shall mean the USDA Forest Service, Pacific Southwest Region; the USDI Bureau of Land Management, California Office; the USDI National Park Service, Pacific West Region; USDI Fish and Wildlife Service, Pacific Southwest Region, and USDI Bureau of Indian Affairs, Pacific Region.

14. **FEDERALLY RECOGNIZED TRIBE** shall mean an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.

15. **GOVERNING BODY RESOLUTION** shall mean a formal declaration of the governing body concerning a certain subject which it either cannot or does not wish to control by ordinance.

16. **HOME UNIT** shall mean the geographical location an individual is normally assigned to work.

17. **INCIDENT** shall mean an occurrence or event, either human-caused or natural phenomena, that requires action by emergency service personnel to prevent or minimize loss of life or damage to property and/or natural resources.

18. **INCIDENT COMMAND SYSTEM (ICS)** shall mean a standardized on-scene emergency management concept specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

19. **INCIDENT COMMANDER** shall mean the ICS position responsible for overall management of the incident and reports to the agency administrator for the agency having incident jurisdiction. This position may have one or more deputies assigned from the same agency or from an assisting agency(s).

20. **INCIDENT MANAGEMENT TEAM (IMT)** shall mean the incident commander and appropriate command and general staff assigned to an incident.

21. **INTERAGENCY** shall mean involvement of two or more agencies to an agreement.

22. **LOCAL AGENCY** shall mean any city, city and county, county, or special district.

23. **LOCAL AGREEMENT** shall mean a pre-defined area agreement that includes that portion of the geographical jurisdictions of both the local reciprocal agreement signatories on which they have historically, frequently and continuously cooperated in initial and extended attack.

24. **LOCAL JURISDICTION** shall mean any political subdivision of government.

25. **MOBILIZATION CENTER** shall mean an off-incident location at which emergency apparatus and personnel are temporarily located pending assignment, release or reassignment.

26. **MOU/MOA** shall mean a memorandum of understanding or memorandum of agreement, which is a formal business document used to outline an agreement made between two separate entities, groups, or individuals.

27. **MUTUAL AID** shall mean an agreement in which two or more parties agree to furnish resources and facilities and to render services to each party of the agreement to prevent and combat any type of disaster or emergency.

28. **NON SUPPRESSION PERSONNEL** shall mean personnel who occupy a civilian position within a fire agency.

29. **POLITICAL SUBDIVISION** shall mean any city, city and county, county, district, or other local governmental agency or public agency authorized by law.

30. **PORTAL TO PORTAL** shall mean the time of initial dispatch from home base to the time of return to home base.

31. **SALARY SURVEY** refers to the form used to establish rates for reimbursement filed with Cal OES Fire and Rescue Division.

32. **STAGING AREA** shall mean the location where emergency apparatus and personnel are assigned to an incident for deployment on a three-minute availability status.

33. **STRUCTURAL FIRE PROTECTION** shall mean fire suppression within a structure.

34. **STRUCTURE DEFENSE** shall mean the protection of homes or other structures from wildland fire before the fire reaches the structure; exterior fire protection measures.

35. **SUPPLEMENTAL PERSONNEL** shall mean overhead tied to a local fire department generally by agreement who are mobilized primarily for response to incidents/wildland fires outside of their district or mutual aid zone. They are not a permanent part of the local fire organization and are not required to attend scheduled trainings, meetings, etc., of the department staff.

36. **SUPPRESSION PERSONNEL** shall mean personnel who routinely respond to emergencies.

37. **TRIBAL FIRE DEPARTMENT** shall mean a tribal entity with suppression and or all-risk response capabilities.

*18A

EXHIBIT B
COMPENSATION

Compliance Data Services

April 1, 2015

Ms. Emma Karlen
Finance Director
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

**Re: Compliance Data Services Transient Occupancy Tax Compliance Review Proposal**

Dear Emma,

Compliance Data Services (CDS) is pleased to provide you with a proposal to assist in the City's compliance management of transient occupancy tax. CDS strives to continue with the working relationships and core values that had been established by Tax Compliance Services over the course of the last 15 years. The concept includes an educational approach for hotel and motel operators that will solve problems arising out of errors in applying the City's tax per the requirements of the ordinance.

This proposal is for a fixed fee service for 19 hotels and motels. The amount charged for these services shall be payable as a lump sum in the amount of $20,500 upon completion of the requirements which are fully in line with CDS's scope of services.

Please don't hesitate to contact me with any questions or clarifications.

Sincerely,

Scott J. Thompson

CITY COUNCIL APPROVAL

DATE: ______________

**CONSULTING SERVICES AGREEMENT BETWEEN**
**THE CITY OF MILPITAS AND**
**SCOTT THOMPSON DBA COMPLIANCE DATA SERVICES**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and **Scott Thompson** an individual doing business as **Compliance Data Services** ("Consultant") as of July 1, 2015.

**AGREEMENT**

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

**1.1** **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on **June 30, 2016**, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

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

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

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

**Section 2.** **COMPENSATION.** City hereby agrees to pay Consultant a guaranteed maximum price not to exceed Twenty Thousand and Five Hundred Dollars (**$20,500.00)** for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

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

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

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

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

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

**2.5** **Reimbursable Expenses.** Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

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

**2.7** **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

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

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

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

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

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

**4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this

Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

**4.2.3** **<u>Additional requirements.</u>** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

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

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3** **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) covering the licensed professionals' errors and omissions.

**4.3.1** Any deductible or self-insured retention shall not exceed $150,000 per claim.

**4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3.3** The policy must contain a cross liability clause.

**4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

**4.4 Requirements for All Policies.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

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

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

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Declare Consultant in material breach of the Agreement and terminate the Agreement.

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

**Section 5.** **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

**Section 6.** **STATUS OF CONSULTANT.**

**6.1** **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3.

Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

**6.2** **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## Section 7. LEGAL REQUIREMENTS.

**7.1** **Governing Law.** The laws of the State of California shall govern this Agreement.

**7.2** **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

**7.3** **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

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

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

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

## Section 8. TERMINATION AND MODIFICATION.

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

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

**8.2** **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

**8.3** **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

**8.4** **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

**8.5** **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

**8.6** **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

**8.6.1** Immediate cancellation of the Agreement;

**8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

**8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

## Section 9. KEEPING AND STATUS OF RECORDS.

**9.1** **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

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

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

## Section 10 MISCELLANEOUS PROVISIONS.

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

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

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

**10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

**10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

**10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

**10.8** **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9** **Contract Administration.** This Agreement shall be administered by Jane Corpus, Finance Manager who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10** **Notices.** Any written notice to Consultant shall be sent to:

Compliance Data Services
Scott J. Thompson
6255 Canoga Avenue, Unit 19
Woodland Hills, CA 91367

Any written notice to City shall be sent to:

City of Milpitas
Jane Corpus, Finance Manager
455 East Calaveras Boulevard
Milpitas, California 95035

**10.11** **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.12** **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

**10.13** **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Thomas C. Williams, City Manager

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Jane Corpus, Finance Manager

CONSULTANT

Name of Authorized Representative

Title of Authorized Representative

Taxpayer Identification Number

City of Milpitas Business License Number

# EXHIBIT A

## Scope of Work

### Transient Occupancy Tax Audit Services

Consultant shall provide all labor, materials, and necessary appurtenances to perform **Transient Occupancy Tax Audit Services** for the period of July 1, 2015 through June 30, 2016, within limits of the City of Milpitas, California, as follows:

Transient Occupancy Tax Compliance Services:

Consultant shall perform all field visits during the contract term. This visit pattern seems to be the most satisfying to hotel/motel operators while protecting the City from any loss due to statute limitations.

Consultant shall review as necessary each filing of each hotel at the time it is filed with the City. Should there be any clarifications required related to documentation held by the hotel for exempted revenues or any other apparent issues, Consultant shall immediately contact the hotel to resolve those issues. This process will promote a continuous positive communication link from the City to its hotel/motel operators and avoid difficult collecting of interest and penalties for errors not detected.

Consultant shall assist the City in resolving any outstanding TOT liability issues with the hotel/motel community by acting as a communication link to clarify the taxes owed the City.

Consultant shall provide training to hotel/motel operators as needed.

### Compliance Review Procedures

1. Notify each hotel/motel within the City, on the list provided, of the upcoming review. Include the listing of the data that must be made available at the time of the site visit. An authorization letter executed by the City, introducing Consultant as a representative and explaining the confidentiality of any data used as a part of this process will also be enclosed (To be provided). The hotel/motel operator will be advised that Consultant will contact them within thirty (30) days to set an appointment for the site review.

2. Consultant shall provide the hotel/motel operator with a current copy of the City's transient occupancy tax ordinance (To be provided). A review of the requirements for record keeping and exemption qualifications within the ordinance will be conducted with the appropriate hotel/motel staff.

3. During the site visit, Consultant shall test daily, monthly and annual revenue records for consistency with the filed returns with the City. Individual guest records will be tested to ensure that procedures are in place that support complete reporting of all revenues received by the hotel/motel.

4. Consultant shall test the exempted revenues for accuracy and complete documentation as required by the City's ordinance. Individual guest records will be reviewed to test for proper qualification of those exempted revenues.

5. When available, the bank deposits history of the hotel/motel will be reviewed and tested for consistency with filed TOT returns with the City.

6. When available, the federal tax filing for the hotel/motel will be reviewed for consistency with the filed TOT returns with the City.

7. Consultant shall prepare reports documenting the findings of the field review. Within those reports any tax, interest and penalties will be so stated as such. A draft letter to the hotel/motel operator will also be included.

8. Consultant shall continue to support the City in any collection efforts related to the findings in the review. Consultant shall interface with the hotel/motel to explain any questions related to the review and its procedures.

9. Consultant shall provide the hotel/motel operators with a point of contact to provide answers to questions related to transient occupancy tax applications. Those answers will provide for immediate accuracy in applying the City's ordinance.

10. Consultant shall review each filing for each hotel/motel within the City for accuracy, immediately after it has been filed with the City. This process will help reduce any problems associated with hotel/motel's making errors and having long periods of interest and penalty applications build up.

# EXHIBIT B

## COMPENSATION SCHEDULE

(SEE ATTACHED)

# AMENDMENT NO. 4 TO THE AGREEMENT WITH DATAPROSE, LLC FOR UTILITY BILLING SERVICES

This Amendment is entered into this __th day of June, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **DataProse, LLC**, a Texas limited liability company registered in the State of California (hereafter referred to as "CONTRACTOR").

## RECITALS

WHEREAS, on August 21, 2007, the City Council authorize the award of a three year agreement, with option to renew for three one-year extensions to DataProse, Inc. for utility billing services; and

WHEREAS, on August 21, 2007, the parties entered into an Agreement for citywide utility billing services in the annual not-to-exceed amount of Eighty-One Thousand dollars ($81,000) ("Agreement"); and

WHEREAS, on June 30, 2010, the parties entered into Amendment No.1 to the Agreement to acknowledge the acquisition of DataProse Inc. by CSG Systems, Inc. and exercising the first year extension from July 1, 2010 through June 30, 2011; and

WHEREAS, on April 17, 2013, the parties entered into Amendment No. 2 to the Agreement to extend the term of the Agreement from July 1, 2013 to June 30, 2014 in the amount not to exceed Eighty-One Thousand dollars ($81,000); and

WHEREAS, on July 1, 2013, the parties entered into an Assumption Agreement to allow DP2 Billing Solutions, LLC, dba Dataprose a Texas limited liability company to assume the terms, conditions, and liabilities under the Agreement; and

Whereas, on August 29, 2013 DP2 Billing Solutions, LLC, dba Dataprose changed its name to DataProse, LLC; and

WHEREAS, on May 20, 2014 the parties entered into Amendment No. 3 to Agreement to extend the term of the Agreement from July 1, 2014 through June 30, 2015 with a revised scope of services in the amount of Fifty-Six Thousand Five Hundred dollars ($56,500) for a total eight year contract amount not-to-exceed Six Hundred Twenty-Three Thousand Five Hundred dollars ($623,500); and

WHEREAS, the parties now desire to further amend the Agreement to extend the term from July 1, 2015 through June 30, 2016 in the amount not-to-exceed of Sixty-Two Thousand Five Hundred dollars ($62,500) for a total nine year contract amount not-to-exceed Six Hundred Eighty-Six Thousand Five Hundred dollars ($686,000).

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

1. Section 1.1 of the Agreement entitled “Term of Services” is amended in its entirety to read as follows:

   1.1 Term of Services. The term of this Agreement shall begin on the date first noted above as August 21, 2007 with six one year options to renew through June 30, 2016, based on satisfactory performance by the Consultant. Consultant shall complete all the work described in the Scope of Work prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as provided for in Section 8.

2. The Scope of Services under the amended Agreement is further amended to include the Scope of Services set forth in EXHIBIT A-1 which is attached hereto to Amendment No. 4 and incorporated by reference.

3. Compensation under the Agreement for the term from of July 1, 2015 through June 30, 2016 shall not exceed Sixty-Two Thousand Five Hundred dollars ($62,500) in accordance with unit pricing described more fully in EXHIBIT B-1 of this Amendment No. 4.

4. CONSULTANT agrees to maintain and pay for all insurance policies as stated in Section C, entitled “Insurance Coverage Requirements for Professional Services” of the Agreement, between CONSULTANT and the CITY. CONSULTANT shall provide the CITY with renewal certificates of the current policies upon expiration of the current policy.

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

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

APPROVED BY:

| CITY OF MILPITAS | DATEPROSE, LLC. |
|---|---|
| ______________________________ | ______________________________ |
| Thomas C. Williams, City Manager | Curtis Nelson, Chief Operating Officer |
| Approved as to Form: | Approved as to Content: |
| ______________________________ | ______________________________ |
| Michael J. Ogaz, City Attorney | Jane Corpus, City Project Manager |

EXHIBIT A-1

## SCOPE OF WORK AND REQUIREMENTS

**Document Design**

The City requires the design of the statement is professional looking, and easy to understand. The same design can be used for both the original bill statements and reminder notices. The statement should be flexible enough to accommodate single account bills and multiple accounts consolidated bills and sufficient space to include information on the front and the back. The statement should include a scan-able pay stub to enable payment by check and bar coding for postal mailing and payment processing. The use of color, graphics, and icons is encouraged.

**System and Software**

The City requires a secure transmission of billing data to the vendor. The vendor must be able to provide secure web and/or sFTP file transfer options for upload of the billing file for processing. The City expects the vendor's software to be able to handle Extended Markup Language (XML) file and fixed length text file to accommodate accounts with multiple service locations. The City must be able to log into the Vendor's server and transmit the files as needed. The City must have the ability to view and approve sample bills online before they are printed and mailed. Vendor must be able to provide reports via a secure portal which requires username, password and SSL to access.

The vendor must send via email a File Confirmation Report – to confirm receipt of file transmission.

The vendor must be Payment Card Industry (PCI) Full Compliance, including the Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP). Vendor must submit annually the Statement on Standards for Attestation Engagement (SSAE) No. 16 (SOC1) Audit. The vendor must be Federal Trade Commission's Red Flags Rule Compliance. Vendor must provide information about its Disaster Recovery policy and Information security. Vendor must have out-of-state Disaster Recovery support. The vendor must have a disaster recovery facility to process the City's bills if the main facility becomes inoperable. Provide locations and information about these facilities.

The vendor must provide necessary security to protect the City's data from unauthorized access. Please provide details about the security measures that are in place. Include procedures for ensuring that only authorized persons are admitted to the production floor.

The vendor must be able to provide an independent test report stating the application is free from known security defects.

The vendor must allow site visits by City personnel.

**Document Printing**

The City prefers to take advantage of volume discounts in the printing of the forms and envelopes; consequently may require storage of the forms by the vendor until they are needed for production. The City requires consistent print registration and quality so that the imaged billing data falls correctly into appropriate locations on the forms.

The vendor must be able to reproduce the preprinted and perforated paper stock that can match or exceed the quality of the current stock and provide the same number of preprinted colors.

The vendor must have the capability to suppress the printing of bills and/or envelopes for certain customers, based on City requirements.

The vendor must have the capability to print messages, logos and usage history graphs, and multiple page bills as needed.

The vendor must confirm the file counts of bills/statements produced and mailed immediately after processing is complete. The data is the sole property of the City of Milpitas and will not be used by the vendor for any other purpose without prior written authority.

**Mailing Services**

The City requires the accurate insertion of items into the mailing envelopes. Some commercial accounts may require two or more pages due to consolidated statements. From time to time, the City may provide additional inserts to be included in the mailing. The vendor must accept inserts printed by other vendors (please provide insert specifications). The City also requires certain inserts to be included with selected bills – for example residential related inserts to be included with residential bills only. The vendor must be able to provide insert printing services as well.

The City expects that all bills and reminder notices will be generated and delivered to the U.S. Postal Service (USPS) the same day that the billing data was transmitted to the vendor. The vendor must ensure that proper postage is applied to the envelopes for mailing. Bills must be mailed via presorted first class mail to maximize postal discounts. Vendors must use the USPS Intelligent Mail Barcode for all outgoing mail pieces. The City should be able to verify proof of delivery to the USPS on an as-needed basis. Customer addresses must be validated and updated as necessary by the vendor using Coding Accuracy Support System (CASS) USPS-certified software. The vendor must provide National Change of Address (NCOALink) or Address Correction Service (ACS).

The City must be notified of the number of bills and reminder notices sent immediately following completion of the mailing. The vendor needs to provide documentation for the use of postage monthly.

Upon mailing of the bills and reminder notices, a file containing the exact image of the bills and reminder notices be sent back to the City in a non-proprietary format (like Portable Document Format (PDF), Tagged Image File Format (tiff) or Joint Photographic Expert Group (jpg) format).

**Document Archive**

The City requires all “valid” (bills not in error) bill images must be provided via secured transmission to City of Milpitas and archived as Portable Document Format (PDF) files at the vendor’s portal on the same day the bill files are received by the vendor. This includes bills that are not printed based on requirements from the City. Archive files should be accessible to the City staff via an online interface. Bill images shall be stored for 24 months.

**Integration with Invoice Cloud**

The vendor must provide an Application Programming Interface (API) integration with Invoice Cloud. The integration will be used for presenting PDF bills online, managing the auto pay and paperless bill process, and re-enrollment in paper billing if customer’s email notification “bounces” as undeliverable.

The City requires that once the bills are printed, images will be accessible through the City’s website for viewing and to those who have registered to receive their bills over the internet.

EXHIBIT B-1

COMPENSATION

| CONTRACT TERM: July 1, 2015 to June 30, 2016 | | | |
|---|---|---|---|
| **SERVICES** | **RATE** | **VOLUME** | **AMOUNT** |
| **Dunning Laser Insert, Seal, Meter & Sort** | $ 0.0980 | 19,188 | $ 1,880.42 |
| **Regular Additional Impressions** | $ 0.0500 | 9,437 | $ 471.86 |
| **Regular Laser Insert, Seal, Meter & Sort** | $ 0.0980 | 131,504 | $12,887.35 |
| **Dunning Search & Viewbill** | $ 0.0150 | 19,188 | $ 287.82 |
| **Regular Search & Viewbill** | $ 0.0150 | 131,504 | $ 1,972.55 |
| **TOTAL SERVICES AMOUNT** | | | $17,500.00 |
| **ESTIMATED POSTAGE COST** | | | $45,000.00 |
| **TOTAL NEW CONTRACT AMOUNT** | | | $62,500.00 |

Jensen Landscape Services, Inc.
Amendment #9

**AMENDMENT NO. 9 TO THE AGREEMENT WITH JENSEN LANDSCAPE SERVICES, INC. FOR MCCARTHY RANCH LANDSCAPE MAINTENANCE SERVICE**

This Amendment is entered into this 18th day of May, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Jensen Landscape Services, Inc.** a California corporation (hereafter referred to as "CONTRACTOR").

**RECITALS**

A. WHEREAS, the parties entered into an agreement entitled “McCarthy Ranch Landscape Maintenance Services” on August 30, 2010 (“Agreement”) for an initial contract amount of Sixty-Two Thousand Eight Hundred and Seventy Nine dollars ($62,879.00). This is a three year contract with two one year renewal options; and

B. WHEREAS, the parties entered into Amendment No. 1 to the Agreement on November 3, 2010 to increase the total contract amount by Twenty-Six Thousand Nine Hundred Thirty-Two Dollars ($26,932.00), a one time increase for tree pruning on the west side of North McCarthy Blvd.; and

C. WHEREAS, the parties entered into Amendment No. 2 to the Agreement on June 8, 2011 to increase the total contract amount by Twenty-One Thousand Twenty-Six Dollars ($21,026.00), a one time increase for tree pruning on the east side of North McCarthy Blvd.; and

D. WHEREAS, the parties entered into Amendment No. 3 to the Agreement on January 5, 2012 to adjust the pesticide usage reporting to a standardized format supplied by the City of Milpitas at no additional cost to the City; and

E. WHEREAS, the parties entered into Amendment No. 4 to the Agreement on July 16, 2012 to increase the total contract amount by One Thousand Three Hundred Dollars ($1,300.00), a one time increase for irrigation repairs and plant replacement; and

F. WHEREAS, the parties entered into Amendment No. 5 to the Agreement on July 16, 2012 to increase the total contract amount by Five Thousand Dollars ($5,000.00), a one time increase for irrigation repairs and plant replacement; and

G. WHEREAS, the parties entered into Amendment No. 6 to the Agreement on March 22, 2013 to increase the total contract amount by Five Thousand

Dollars ($5,000.00), a one time increase for irrigation repairs and plant replacement; and

H. WHEREAS, the parties entered into Amendment No. 7 to the Agreement on April 30, 2013 to adjust the pesticide usage reporting to the standardized format provided by the California Regional Water Quality Control Board at no additional cost to the City; and

I. WHEREAS, the Agreement including Amendments Nos. 1 through 7 outlined above authorized payment from City to Contractor totaling Two Hundred Forty-Seven Thousand Eight Hundred Ninety-Five Dollars ($247,895.00), however, Contractor has so far provided services totaling Two Hundred Forty-Eight Thousand Seven Hundred Thirty-Seven Dollars and Twenty-Five Cents ($248,737.25); and

J. WHEREAS, the parties entered into Amendment No. 8 to the Agreement on August 21, 2013 to further amend the Agreement to authorize the additional payment for services provided by Contractor to City exceeding the previous amendments, increase the total amount of the Agreement by Three Thousand Five Hundred Fifty Dollars ($3,550.00) for irrigation repairs along McCarthy Blvd. in accordance with Addendum No. 1 attached to Amendment No. 8, and increase the total contract amount for the remaining two years of the Agreement; to Seventy-Two Thousand Eight Hundred and Seventy-Nine dollars (72,879.00) per year for a total compensation amount of Four Hundred and Seven Thousand Six hundred and Eight-One dollars ($407,681.00); and

K. WHEREAS, the parties now wish to extend the term of the contract by ninety (90) days to November 30, 2015 and increase the compensation to the contract for that period by Eighteen Thousand Two Hundred Nineteen dollars and Seventy-Five cents ($18,219.75).

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

1. City agrees to pay Contractor for all services under the amended Agreement as follows:

   A. 8/30/2015 to 11/30/2015: $18,219.75

2. CONTRACTOR agrees to continue to maintain and pay for all insurance policies as stated in “Exhibit A – Insurance Requirements General” throughout the term of the Agreement and shall provide the City with renewal certificates and endorsements of the insurance policy.

3. All other provisions of the amended Agreement not amended by this Amendment No. 9 shall remain in full force and effect.

This Amendment is executed as of the date written on Page 1.

APPROVED BY:

| CITY OF MILPITAS | JENSEN LANDSCAPE SERVICES, INC. |
| --- | --- |
| ____________________________<br>Chris Schroeder, Purchasing Agent | ___________________________________<br>Name Authorized Representative |
| Approved As To Content: | ___________________________________<br>Title of Authorized Representative |

_______________________________
Steve Erickson, Project Manager

Approved As To Form:

_______________________
Michael J. Ogaz, City Attorney

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
QUALITY ASSURANCE ENGINEERING, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), and Quality Assurance Engineering, Inc., a California Corporation DBA "Consolidated Engineering Laboratories" ("Consultant") as of July 1, 2015.

**AGREEMENT**

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

**1.1** **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2020, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

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

**1.3** **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.

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

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

**Section 2.** **COMPENSATION:** City hereby agrees to pay Consultant an amount not to exceed One Million Dollars ($1,000,000) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

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

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

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

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

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

**2.6 Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed twelve thousand five hundred dollars ($12,500.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

**2.7 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

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

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

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

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

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

**4.1** **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

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

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

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

**4.3.1** Any deductible or self-insured retention shall not exceed $150,000 per claim.

**4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3.3** The policy must contain a cross liability clause.

**4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

**4.4 Requirements for All Policies.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

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

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

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Declare Consultant in material breach of the Agreement and terminate the Agreement.

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

**Section 5.** **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

## Section 6. STATUS OF CONSULTANT.

**6.1** **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

**6.2** **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## Section 7. LEGAL REQUIREMENTS.

**7.1** **Governing Law.** The laws of the State of California shall govern this Agreement.

**7.2** **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

**7.3** **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

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

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

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

## Section 8. TERMINATION AND MODIFICATION.

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

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

**8.2** **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

**8.3** **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

**8.4** **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

**8.5** **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

**8.6** **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

**8.6.1** Immediate cancellation of the Agreement;

**8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

**8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

## Section 9. KEEPING AND STATUS OF RECORDS.

**9.1** **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

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

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

## Section 10 MISCELLANEOUS PROVISIONS.

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

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

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

**10.4** **No Implied Waiver of Breach**. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

**10.5** **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

**10.6** **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**10.7** **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

**10.8** **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9** **Contract Administration.** This Agreement shall be administered by ________ who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10** **Notices.** Any written notice to Consultant shall be sent to:

Gary Cappa, President/CEO
Consolidated Engineering Labratories
2001 Crow Canyon Road, Suite 100
San Ramon, CA 94583

Any written notice to City shall be sent to:

Steven Machida, Director of Engineering/City Engineer
455 East Calaveras Boulevard
Milpitas, California 95035

**10.11** **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.12** **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

**10.13** **Exhibits**. All exhibits and attachments to exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Thomas C Williams, City Manager

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Steven Machida, Director of Engineering/City Engineer

CONSULTANT

Gary Cappa, President/CEO

Taxpayer Identification Number

94-2988193

Corporate Entity Number

C1187558

# EXHIBIT A

## SCOPE OF SERVICES FOR ON-CALL CONSTRUCTION INSPECTION & MATERIAL TESTING SERVICES FOR VARIOUS CAPITAL IMPROVEMENT PROJECTS

CONSULTANT shall provide to the CITY's Department of Public Works with on–call construction inspection and material testing services for various CITY capital improvement projects, on an as needed basis. CONSULTANT'S services shall be provided as requested by the CITY on an as needed basis, as set forth in a specific project Service Order in the form attached as **Exhibit D** to this Agreement.

## SECTION 1. GENERAL PROVISIONS

A. CONSULTANT shall perform all services to the satisfaction of the CITY.

B. All of the services furnished by the CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among inspection and materials testing CONSULTANT professionals of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.

C. All work performed under this AGREEMENT shall be authorized by a specific Service Order. Each Service Order given by CITY shall detail the nature of the specific services to be performed by the CONSULTANT, the time limit within which such services must be completed and the compensation for such services. Such details shall include a description of the project for which CONSULTANT shall perform the services, the geographic limits of the project, the type and scope of services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. CONSULTANT shall not perform any services unless authorized by a fully executed Service Order. Any unauthorized services performed by CONSULTANT shall be at no cost to the CITY.

D. CONSULTANT shall begin work under the service order only after receipt of the service order bearing the approval signature of the City Engineer and the signature of the CITY Attorney approving the service order as to form. Each authorized Service Order issued under this AGREEMENT by CITY shall be incorporated into the terms and conditions of this AGREEMENT.

E. CITY will assign a Project Manager to facilitate each Service Order authorized under this AGREEMENT. CONSULTANT shall coordinate with the designated Project Manager on the performance of each Service Order.

F. CONSULTANT shall be responsible for the coordination with CITY and federal, state and local agencies that are necessary for all services authorized under this AGREEMENT.

G. <u>**Assignment of Personnel.**</u> CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. The Service Order may name any specific personnel who shall be performing services. In the event that CITY, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, CONSULTANT shall, immediately upon receiving notice from CITY of such desire of CITY, reassign such person or persons.

**SECTION 2. BASIC SERVICES.**

A. CONSULTANT shall provide construction inspection and materials testing consulting services for various CITY capitol improvement projects, as more particularly described in the authorized Service Order. The authorized Service Order may include any of the specific construction inspection and materials testing tasks set forth below in Section 3. The authorized Service Order may also include any other related inspection and testing services described and agreed to be performed by the CONSULTANT.

B. <u>Service Initiation</u>

<u>Prepare Service Order</u> - Upon request of CITY's Project Manager, CONSULTANT shall meet with the Project Manager to discuss the Project. CONSULTANT shall become familiar with the Project description, scope and goals and develop proposed scope of services.

CONSULTANT shall prepare a proposed scope of work for Project services consistent with CITY'S standard form of Service Order (attached hereto as <u>**Exhibit D**</u>). The proposed scope of services shall, at a minimum, include the following: Project Description, Scope of Services including deliverables, and Schedule of Performance and Schedule of Compensation. CONSULTANT shall submit the proposed scope of services to the Project Manager in both paper and electronic format.

The Project Manager will review and comment on proposed scope of work, and the parties shall agree on the terms of the final Service Order. CONSULTANT shall not be compensated for work performed in preparing a draft scope of services for a Service Order.

C. <u>Service Implementation</u>

Upon receipt of an authorized Service Order, CONSULTANT shall begin Project services described in the Service Order in accordance with the Schedule of Performance in the Service Order. For each Project, in addition to the specified services, products and deliverables detailed in the Service Order, CONSULTANT shall perform the following tasks:

**Initial Meeting -** Prior to beginning substantive work on a project, CONSULTANT shall meet with CITY to establish procedures and notifications for any necessary meetings and communications with CITY staff; collect available data from the CITY and establish additional data needs and availability; confirm the format for all project products and deliverables; and address any preliminary project concerns. The meeting will be the primary opportunity to discuss the CITY'S intent, schedule and budget for the project.

The CONSULTANT shall prepare minutes of the meeting and distribute minutes to meeting participants.

**Project Coordination Meetings -** CONSULTANT shall attend and/or conduct project coordination meetings as required to perform authorized services and as required by Project Manager. CONSULTANT shall prepare minutes of each meeting and distribute minutes to participants.

**Project Schedule -** CONSULTANT shall prepare and submit a detailed schedule of performance consistent with the schedule contained in the Service Order to the Project manager for review and approval. CONSULTANT shall confirm or update the schedule monthly at a minimum. Any changes to the schedule shall only be permitted with the written approval of CITY's Project Manager.

**Project Progress Report -** CONSULTANT shall submit a monthly report to the Project Manager detailing progress on the Project services.

**Request for Payment / Invoice -** CONSULTANT shall submit progress payment invoices to the Project Manager monthly, as specified in **<u>Exhibit B</u>**. The updated Project schedule and progress report may be submitted as attachments to the invoice.

**Project Record -** CONSULTANT shall develop and maintain a detailed record of the chronology of the project tasks and milestones completed that are decisive, conclusive or relevant to the outcome of the Project. CONSULTANT shall submit a copy of the Project Record to the Project Manager prior to final payment for services performed on the Project. The Record shall be submitted in both paper and electronic format.

**Project Documents** - Aside from deliverables specified in the Service Order, and before the conclusion of the Project and final payment for services performed on the Project, CONSULTANT shall submit to the Project Manager a copy of all project documents that are decisive, conclusive or relevant to the outcome of the Project. Such documents may include, without limitation, topographical surveys and mapping, utility mapping, site inventories, base plans, reports and studies, permit applications and permits, environmental documentation, records of meetings, and communication documents. Documents shall be submitted in both paper and electronic format, as available.

## SECTION 3. SPECIFIC CONSTRUCTION INSPECTION & MATERIAL TESTING SERVICES.

A. In addition to any other inspection and testing services contained in the authorized Service Order, the Service Order may incorporate any of the services set forth below in this Section 3 by simply identifying the particular Task, in which case the Task is considered to have been incorporated into the authorized Service Order and CONSULTANT shall perform the Task as set forth herein.

B. Tasks: Listed below are the Tasks which may be included in the Service Order depending on the scope of the project.

**Task 1:** Review the project scope.

**Task 2:** Visit the project site, as necessary.

**Task 3:** Determine the type of inspection/testing/evaluation needed, as discussed with City staff. Prepare a work plan.

**Task 4:** Obtain necessary permits and approval from applicable agencies with jurisdiction over the project.

**Task 5:** Perform inspection, sampling and testing. Services shall be performed within 24 hours notice by the City if required.

**Task 5a: Soils Testing:**

CONSULTANT shall perform those soils compaction tests identified in the Contract Documents, or, if no such tests are identified, those tests needed to determine whether the soil is compacted in conformance with the Standards and Requirements contained in the Contract Documents, such as ASTM D1557 or D2922 and D3017-78 and California Test 216 and 231.

Within 1 working days of completing each compaction test, CONSULTANT shall provide the CITY with a written notice describing the test performed and the results of the test, and indicating whether or not compliance with the Standards and Requirements contained in the Contract Documents was achieved. If compliance was not achieved, the written notice should include what corrective action is needed to obtain compliance.

If corrective action is needed, the CONSULTANT shall re-perform the compaction test within 1 working day of being notified by the CITY or

Project contractor that the necessary corrective action was completed. Within 1 working day of completing a re-test, CONSULTANT shall provide the CITY with written notices consistent with the requirements of above.

**Task 5b: Asphalt Testing**

CONSULTANT shall perform those asphalt compaction tests identified in the Contract Documents, or, if no such tests are identified, those tests needed to determine whether the asphalt is compacted in conformance with the Standards and Requirements as required in the Contract Documents such as, California Test 375 and 304. In addition CONSULTANT shall provide full time inspection of asphalt placement, as requested, to ensure asphalt is placed in accordance with Caltrans Section 39.

Within 1 working days of completing each compaction test, CONSULTANT shall provide the CITY with a written notice describing the test performed and the results of the test, and indicating whether or not compliance with the Standards and Requirements contained in the Contract Documents was achieved. If compliance was not achieved, the written notice should include what corrective action is needed to obtain compliance.

If corrective action is needed, the CONSULTANT shall re-perform the compaction test within 1 working day of being notified by the CITY or Project contractor that the necessary corrective action was completed. Within 1 working day of completing a re-test, CONSULTANT shall provide the CITY with written notices consistent with the requirements of above.

**Task 5c: Structural Steel and Metals Testing and Inspections**

CONSULTANT shall inspect and certify the welding operations at the Project construction site and at the metal fabrication shop as needed to meet the Standards and Requirements contained in the Contract Documents. These services involve CONSULTANT verifying that the welder certifications, material preparation, welding procedures, structural steel mill certificates and material identifications comply with the Standards and Requirements contained in the Contract Documents. They also include CONSULTANT testing welds in accordance with ASTM standards and per the Standards and Requirements contained in the Contract Documents. In addition, CONSULTANT shall provide full-time inspection for all structural welds as provided for in the Standards and Requirements contained in the Contract Documents as requiring full-time inspection.

CONSULTANT shall perform special inspection and certification of welding of bolts, embeds and reinforcing steel, structural steel, anchor / expansion bolts, post-tensioning tendon, steel studs, reinforcing steel strands and rebar, mechanical connectors (splices), high strength bolting,

**Task 5d: Structural Concrete Testing and Inspection**

CONSULTANT shall perform those structural concrete tests and inspections identified in the Contract Documents, or, if no such tests and inspections are identified, those tests and inspections needed to determine if the concrete conforms to the Standards and Requirements contained in the Contract Documents such as ACI 318 and CBC Section 1903 and 1905, and ASTM C31 and C143.

Within 1 working day of completing each inspection and/or test, CONSULTANT shall provide the CITY with a written notice describing the inspection and/or test performed and the results, and indicating whether or not compliance with the Standards and Requirements contained in the Contract Documents was achieved. If compliance was not achieved, the written notice must state what corrective action is needed to obtain compliance

If corrective action is needed, the CONSULTANT shall re-perform the inspection and/or test within 1 working day of being notified by the CITY or Project contractor that such

**Task 6:** Prepare a report of the inspection and/or testing results and conclusions/recommendations. Upon receipt of the analytical results, Consultant shall prepare a summary letter comparing the analytical data to the governing allowable limits. The Summary Report will include copies of the laboratory reports and a sample location map. The Summary Report will provide conclusions and recommendations. Summary report shall be provided to City staff within in one week of receipt of the analytical results.

**Task 7:** Assist City in obtaining approvals and/or permits from County, State, and Federal agencies as required.

## EXHIBIT B

## COMPENSATION SCHEDULE

**Section 1. Maximum Compensation for Master Agreement.**

**1.1 Maximum Amount:** The maximum amount of compensation the CITY will pay to the CONSULTANT under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed One Million Dollars ($1,000,000). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

**1.2 Manner of Payment:** Each Service Order will set forth whether the CITY will pay the CONSULTANT for work performed under such Service Order on a lump sum basis or on a time and material basis. Section 2 of this Exhibit applies to each Service Order where the CITY will pay the CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where the CITY will pay the CONSULTANT on a time and material basis for the work performed.

**1.3 Schedule of Charges:** **<u>Exhibit B-1</u>** of this AGREEMENT, entitled "Schedule of Charges," set forth the CONSULTANT'S charge rates for various personnel as well as the amounts it charges for various special inspections and material tests. Regardless of whether the manner of payment contained in a Service Order is on a lump sum basis or on a time and material basis, compensation shall be determined and based upon the charge rates and charge amounts set forth in the Schedule of Charges.

**Section 2. Lump Sum Payment.**

**2.1 Lump Sum Amount:** The Service Order shall specify the lump sum amount the CITY will pay the CONSULTANT for performing the required work. The lump sum amount compensates the CONSULTANT for all its costs necessary to complete the work, including professional services and reimbursable expenses. CONSULTANT shall complete all work set forth in the Service Order for the lump sum amount.

**2.2 Progress Payments:** The Service Order may provide for the CITY to pay the lump sum amount by making progress payments. Under such circumstances, the Service Order shall specify appropriate milestones and the amount payable upon successful completion of each milestone. Upon completion of a milestone to the CITY's satisfaction, the CONSULTANT shall invoice the CITY for the appropriate progress payment. The CITY will make the appropriate progress payment to the CONSULTANT within thirty (30) days of the Project Managers approval of the CONSULTANT's invoice.

**2.3 Lump-Sum Payment:** If the Service Order does not provide for the CITY to make progress payments, then the CITY shall make a single, lump-sum payment to the CONSULTANT upon completion of all the work to the CITY's satisfaction. Upon completion of the work to the CITY's satisfaction, the CONSULTANT shall invoice the

CITY for the lump-sum amount. The CITY shall pay the lump-sum amount within thirty (30) days of the Project Manager's approval of the CONSULTANT'S invoice.

**Section 3. Payment on a Time and Materials Basis.**

**3.1 Maximum Compensation:** The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional and special inspection services, material tests and reimbursable expenses. The CONSULTANT shall complete all work it is required to perform under the Service Order for no more than the specified maximum amount. Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

**3.2 Budget:** If the Service Order itemizes budget amounts for any phase or category of work, then CONSULTANT shall not exceed such itemized amount without the CITY's prior written authorization. The Project Manager may approve, in writing, transfers of budget amounts between any of the phases or categories of work listed in the Service Order, provided the aggregate total compensation does not exceed the maximum compensation.

**3.3 Rates:** CITY will compensate CONSULTANT at the rates set forth in Exhibit B-1 of this Master Agreement, entitled "Schedule of Charges." Wage rates subject to Prevailing Wage Requirements are subject to revision at the time of issuance of a new Determination and subsequent Determinations for the duration of the AGREEMENT consistent with the provisions of Exhibit "B-1." Rates not subject to Prevailing Wage Requirements are subject to review annually upon request of the CONSULTANT in accordance with the provisions of Exhibit "B-1." The parties must enter into a written amendment to this AGREEMENT to reflect any new rates before such rates become effective.

**3.4 Reimbursable Expenses:** The CITY will reimburse for expenses subject to the following:

Each Service Order will specify the maximum amount of expenses for which the CITY will reimburse the CONSULTANT. Any expense the CONSULTANT incurs beyond the specified amount is at no cost to the CITY.

The following expenses are reimbursable to the extent the CONSULTANT documents to the Director's satisfaction that they were incurred in performing the work required by the Service Order: (a) the cost of mailing, shipping and/or delivery of documents or products to the CITY, (b) the cost of photographing, reproducing and/or copying, (c) the cost of the subCONSULTANT, provided the CITY has preapproved, in writing, the use and cost of the subCONSULTANT, (d) telephone and fax charges, (e) the rental of any specialized equipment to the extent the CITY has preapproved, in writing, the cost of such rental, and (f) any other expenses expressly identified in the service order as reimbursable. No other expenses are reimbursable unless the CITY has preapproved, in writing, such expense.

**3.5 Travel Time:** For Service Orders on a time and materials basis, CITY will not pay time for travel to and from the site. CONSULTANT shall commence billing at its hourly rates only upon CONSULTANT's arrival at the CONSULTANT's work site and CONSULTANT will stop billing at its hourly rates upon CONSULTANT's departure of the CONSULTANT from the CONSULTANT's work site. CITY will provide the CONSULTANT a place to store CONSULTANT's equipment at the project site.

**3.6 Invoice:** Every month the CONSULTANT shall invoice the CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed, the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amounts of payments received to date under the Service Order and the balance of maximum compensation for remaining work on the Service Order.

## Section 4. Others.

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

**EXHIBIT B-1**
**SCHEDULE OF RATES**

# EXHIBIT C

# INSURANCE DOCUMENTS

**EXHIBIT D**
**SERVICE ORDER**

**1 CONSULTANT MASTER AGREEMENT**

This Service Order is made and entered into by and between the CITY OF MILPITAS, a municipal corporation of the State of California and ________, a California corporation. CITY and CONSULTANT have entered into a Master Service Agreement dated ___________ which authorizes the proposed services and compensation as outlined below.

---

**2 SERVICE ORDER**

Service Order No: _______ Date: ___________

Service Order Compensation Amount: $______________________

CONSULTANT Firm Name: _____________________________________________

Address: ________________________________________________________

Contact: _________________________________________________________

Phone/Email: _____________________________________________________

---

**3 PROJECT DESCRIPTION**

Project Name: ____________________________________________________

Brief Description of Services: ________________________________________

Exhibit A: *Include Full Scope of Services, Schedule of Performance and Compensation*

---

**4 APPROVALS**

CONSULTANT: _______________________________________ Date: __________

Assistant CITY Attorney: ______________________________ Date: _________

Director of Public Works: _______________________________ Date: __________

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated, and that funds are available as of this date of signature.

Authorized Signature: ________________________________ Date: _________

## EXHIBIT E

## SPECIAL PROVISIONS

**In the performance of this AGREEMENT:**

**1. Prohibition on Discrimination and Preferential Treatment**

CONSULTANT shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

**2. Compliance Reports.**

If directed by CITY, CONSULTANT shall file, and cause any subcontractor to file, compliance reports with the CITY. Compliance reports shall be in the form and filed at such times as may be designated by the CITY. Compliance reports shall contain such information and be supported by such data or records as may be requested by the CITY to determine whether CONSULTANT or its subcontractor is complying with the nondiscrimination and non-preference provisions of this Agreement.

**3. Failure to Comply With Nondiscrimination Provisions.**

If the CITY determines that the CONSULTANT has not complied with the nondiscrimination or non-preference provisions of this AGREEMENT, the CITY may terminate or suspend this AGREEMENT, in whole or in part.

**4. Subcontracts.**

CONSULTANT shall include provisions of this Agreement in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

**5. Prevailing Wage.** CONSULTANT acknowledges that portions of this contract are a Public Work, subject to the provisions of Section 1771 of the California Labor Code. CONSULTANT shall pay, or cause to be paid, prevailing wages, as set forth in the California Labor Code Section 1770 *et. seq*., for all labor performed on the Project sites to facilitate the professional services provided under this AGREEMENT, including, but not limited to inspection, surveying, drilling, trenching, and excavation. CONSULTANT shall include in all agreements for such labor, a requirement that the employer provide all workers with written notice that prevailing wages apply.

The CONSULTANT is subject to prevailing wage rate compliance monitoring and enforcement by the California Department of Industrial Relations.

The CONSULTANT or Subcontractor(s) shall not be qualified to bid on, be listed on the bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform Public Work pursuant to Section 1725.5 at the time the contract is awarded.

CONSULTANT shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages as required by the State prevailing wage law. CONSULTANT shall provide to the CITY, at no cost to the CITY, a copy of all such records within ten (10) working days of a request for such records by CITY.

CONSULTANT expressly agrees that the compensation agreed to between the parties includes all payment necessary to meet State prevailing wage law requirements. CONSULTANT shall indemnify the CITY for any claims, costs or expenses which the CITY incurs as a result of CONSULTANT'S failure to pay, or cause to be paid, prevailing wages.

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

**7.** **Professional Seal.** Where applicable in the determination of the CITY, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

***22**

## AMENDMENT No. 1 TO AGREEMENT FOR CONSULTATION AND OTHER SERVICES

This Amendment is entered into this 2nd day of June, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and HMH Incorporated, a California Corporation (hereafter referred to as "CONSULTANT").

### RECITALS

WHEREAS, the parties entered into an agreement on August 19, 2014 for professional design services for the widening of Montague Expressway from Capital Avenue to east of Berryessa Creek in the amount of One Hundred Fifty Thousand One Hundred Dollars ($152,100.00) ("Agreement"), and

WHEREAS, the parties desire to amend the Agreement to allow CONSULTANT to provide additional design services for the installation of City TASP street lighting and related electrical, decorative fencing, and median landscape design services east of Berryessa Creek.

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

1. Section 1.1, entitled "Term of Services" of the Agreement is amended in its entirety to read as follows:

   **"Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2016, and Consultant shall complete all the work described prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8."

2. Section 2, entitled "Compensation" of the Agreement is amended in its entirety to read as follows:

   "**COMPENSATION.** City hereby agrees to pay Consultant an amount not to exceed One Hundred Eighty-Eight Thousand and One Hundred Dollars ($188,100) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B and B1 of the Agreement. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement."

3. Exhibit A1, entitled "Scope of Services" of the Agreement is amended to include the additional Scope of Services set forth in the attached Exhibit A2, incorporated fully herein by reference.

4. Exhibit B1, entitled "Compensation Schedule" of the Agreement is amended to include the additional compensation set forth in the attached Exhibit B2, incorporated fully herein by reference.

5. The Consultant agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated August 19, 2014, between HMH Incorporated. and the City of Milpitas. The Consultant shall provide the City with renewal certificates of the current policies upon the expiration of the current policy.

5. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date written on Page 1.

APPROVED BY:

CITY OF MILPITAS

______________________________
Thomas C. Williams, City Manager

CONSULTANT

______________________
HMH Incorporated

__________________________________
Steven Machida, Public Works Director/
City Engineer as to work specifics

APPROVED AS TO FORM:

__________________________
Michael J. Ogaz, City Attorney

**EXHIBIT A2**

**AMENDMENT 1 SCOPE OF SERVICES**

**PROJECT SCOPE:**

The project will widen Montague Expressway to provide for eight through lanes (three through plus one HOV lane each direction), one westbound auxiliary lane, widened shoulders and improved pedestrian sidewalks from Piper Drive to Pecten Court, including replacement of the double-box culvert crossing of Berryessa Creek with a bridge structure and reconstruction of the bridge approaches. The project improvements will conform to BART SVBX C700 construction at the Piper Drive intersection on the north side and near the BART tracks on the south side of Montague. The project improvements will also conform to the BART SVBX C740 design for the south leg of Milpitas Boulevard.

Recently, there have been design modification requests made by the City of Milpitas that are not covered within the currently approved scope of work in the Agreement. These tasks and fees are detailed below.

**SCOPE OF SERVICES:**

# 500 Structural Engineering- Recycled Water Line

A recycled water line is being added under Berryessa Creek. The bridge plans will be updated to ensure that this new line won't conflict with the abutment piles. Additionally, the piles that are adjacent to this new pipe will need to be pre-drilled to extend below the recycled water line.

Additionally, the bridge fencing connection details are being revised to accommodate a picket fence installation.

**DELIVERABLES**

Provide revised pile design, fence connection details, structural calculations and quantities to update the bid estimate.

# 501 Additional TASP Lighting Design

Additional TASP street lights are being added to the design plans, while existing lights near these new lights will be removed. Also, empty conduits are being added to the design plans to accommodate future TASP lighting installations along the frontages of the properties between Piper Drive and S. Milpitas Boulevard. Consultant shall coordinate new layout and design with street light designer in order to accommodate City's request for additional TASP street lights.

**DELIVERABLES**

Provide revised street light layout, designs, conduit installations, and update the bid estimate accordingly.

## 502 Fencing and Fence-Wall Revisions

The design plans originally designated Caltrans standard fencing to be installed on the project retaining walls. The City has requested the change to a metal picket fence that requires additional design and details.

**DELIVERABLES**

Provide new fencing design, update drawings, specifications, revise bid estimate, and coordinate with structural designers for connection details.

## 503 Landscape Revisions I

The easterly boundary of the Transit Area Specific Plan area terminates at Berryessa Creek. The City has requested median landscaping enhancements to be designed east of that boundary that essentially conform to the requirements of the Transit Area Specific Plan. Consultant shall provide landscape design services along the median for the area outside the original boundary established in the Agreement.

**DELIVERABLES**

Provide additional landscape design, irrigation design, and update bid estimate.

## EXHIBIT B2

## COMPENSATION SCHEDULE

Professional Service Fees are as follows:

| Description | | Fees |
|---|---|---|
| 500 Structural Engineering- Recycled Water Line | $ | 10,000 |
| 501 Additional TASP Lighting Design | $ | 12,000 |
| 502 Fencing and Fence-Wall Revisions | $ | 6,500 |
| 503 Landscape Revisions I | $ | 7,500 |
| Not to exceed amount | | **$36,000** |

**CONSULTING SERVICES AGREEMENT BETWEEN**
**THE CITY OF MILPITAS AND**
**IDMODELING, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), and ID Modeling, Inc., a Delaware Corporation registered in the State of California ("Consultant") as of June 2, 2015.

**AGREEMENT**

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

**1.1** **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on July 31, 2016, the date of completion is six (6) weeks from the written notice of proceed for scenarios 1 to 9 as specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

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

**1.3** **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.

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

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

**Section 2.** **COMPENSATION.** City hereby agrees to pay Consultant an amount not to exceed Forty Nine Thousand Nine Hundred and Eighty Dollars ($49,980.00) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

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

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

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

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

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

**2.6** **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed zero dollars ($0.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

**2.7** **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

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

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

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

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

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

**4.1** **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

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

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3** **<u>Professional Liability Insurance.</u>** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) covering the licensed professionals' errors and omissions.

**4.3.1** Any deductible or self-insured retention shall not exceed $150,000 per claim.

**4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3.3** The policy must contain a cross liability clause.

**4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

**4.4 Requirements for All Policies.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

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

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

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Declare Consultant in material breach of the Agreement and terminate the Agreement.

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

**Section 5.** **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

**Section 6. STATUS OF CONSULTANT.**

**6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

**6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

**7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

**7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

**7.3** **<u>Other Governmental Regulations.</u>** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

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

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

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

## <u>Section 8.</u> <u>TERMINATION AND MODIFICATION.</u>

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

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

**8.2** **<u>Extension.</u>** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

**8.3** **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

**8.4** **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

**8.5** **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

**8.6** **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

**8.6.1** Immediate cancellation of the Agreement;

**8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

**8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

## Section 9. KEEPING AND STATUS OF RECORDS.

**9.1** **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

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

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

## Section 10 MISCELLANEOUS PROVISIONS.

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

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

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

**10.4** **No Implied Waiver of Breach**. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

**10.5** **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

**10.6** **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**10.7** **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

**10.8** **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9** **<u>Contract Administration.</u>** This Agreement shall be administered by Steven Machida, City Engineer who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10** **<u>Notices.</u>** Any written notice to Consultant shall be sent to:

ID Modeling, Inc.
Paul Hauffen, President/CEO
55 East Huntington Drive, suite 130
Arcadia, California 91006

Any written notice to City shall be sent to:
Steven Machida, Director of Engineering
455 East Calaveras Boulevard
Milpitas, California 95035

**10.11** **<u>Professional Seal.</u>** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.12** **<u>Integration.</u>** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

**10.13** **<u>Exhibits</u>**. All exhibits and attachments to exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Thomas C Williams, City Manager

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Steven Machida, Director of Engineering

CONSULTANT

IDModeling, Inc.

Name & Title

Taxpayer Identification Number

14-1909685

Corporate Entity Number

C3541418

# EXHIBIT A

## SCOPE OF SERVICES FOR
## MILPITAS RECYCLED WATER MODELING

**General Descriptions of Projects:**
The project scope is computer modeling of the recycled water system in City of Milpitas. The hydraulic modeling shall use the existing model already completed for South Bay Water Recycling (SBWR) consisting of the existing system in City of Milpitas. The Milpitas connection is located on the eastern side of Zone 1 of the SBWR. The work shall include the proposed expansion as described below.

**TASK 1: Project Management**

Project management shall consist of online meetings, communications, scheduling, periodic updates, and invoicing related to the project. Consultant shall provide consistent communication with the City to ensure the project is proceeding according to the project team's expectations. Bi-weekly email updates shall be developed to track prioritized data needs, questions, milestones, and any unanticipated items for timely resolution.

**DELIVERABLE**:
- Invoicing with project status of schedule, budget and tasks (1 hardcopy and one .pdf file via email).

**TASK 2: Document Review and Scenario Development**

The hydraulic modeling shall be updated with the facilities based on information provided by the City. The hydraulic modeling shall include the scenarios described below. Each scenario shall be modeled based upon input from the City to ensure the overall project objectives are met.

**DELIVERABLE**:
- Scenario confirmation with input parameters (one .pdf file via email).

**TASK 3: Model Analyses**

Hydraulic analyses shall be performed under extended period simulation conditions for each scenario to determine the necessary sizes of reservoir storage, booster pumping, and pipeline improvements required to optimize operational storage and system operations. Refer to the Milpitas – Potential RW Extensions Map (Exhibit A2) for the locations of the segments. The scenario is a combination of segments. The following scenarios shall be analyzed:

Scenario 1: Pipe segments 1, 2, and 3 with storage tank sized for golf course needs only

Scenario 2: Pipe segments 1, 2, and 3 with storage tank sized for City operations

Scenario 3: Pipe segments 1, 4, and 5

Scenario 4: Pipe segments 1, 2, 3, 4, and 5 with booster pumping and storage tank sized for City operations

Scenario 5: Pipe segments 1, 2, 3, 4, and 5 with booster pumping and storage tank sized for golf course needs only

Scenario 6: Pipe segments 1 and 4 only

Scenario 7: Determine available fire flow at 20 psi for all model junctions with all segments included. Scenario will include proposed booster pumping and storage tank sized for City operations.

Scenario 8: Pipe segments 1 and 3 only

Scenario 9: Pipe segments 1, 3, and 4 with no looping

**DELIVERABLE**:
A final written report of the model analyses for the scenarios identified above:

- Results figures showing existing system and all proposed pipe segments including pressures and pipe flows and velocities for each scenario analyzed as part of this scope of work
- Map of the pipes with streets (GIS)
- Results reporting detailing flow, pipe headloss and velocity, and residual pressures under peak demands
- Tables showing customer demands and associated model node, and time of peak demand
- Summary technical memorandum detailing the modeling process, scenario development, and results for each scenario identified above. Pipeline, pumping, and storage tank sizing shall be recommended (as applicable) and tabulated for each scenario analyzed. Golf course usage can be off-peak and recommendations shall be provided for preferred time of use to minimize overall peak system demands.

(one .pdf file via email)

**TASK 4: Quality Control/Quality Assurance (QC/QA):**

CONSULTANT shall prepare plans, specifications, estimates, calculations, and other documents (as applicable) with the highest level of quality, free of technical and grammatical errors. CONSULTANT shall implement and maintain the following minimum quality control procedures during the preparation of plans, specifications, estimates, calculations and all other documents (as applicable) relating to this project:

- Design, studies, and calculations are independently checked, corrected and back checked by the CONSULTANT;
- When different disciplines are involved, means to assure that conflicts and misalignments do not exist;
- QC/QA program shall provide for review and assurance of complete coordination and compatibility among the studies, reports, plans, specifications and estimated quantities as applicable;
- QC program shall include field reviews and review of all pertinent materials to verify compatibility of design with existing facilities.

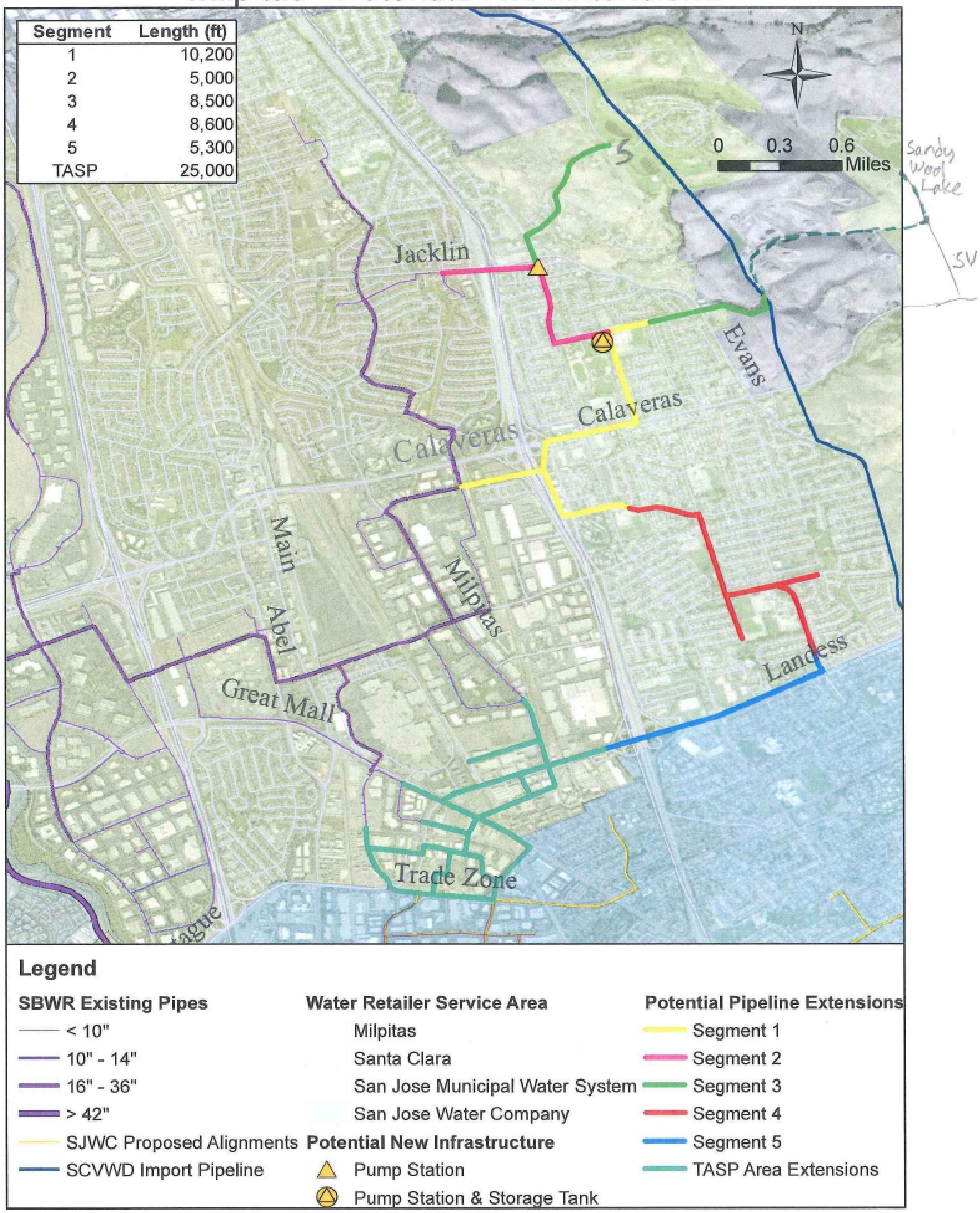
CITY reviews of these documents shall not be considered part of the QC/QA program, but are only intended to be for review of scope and to coordinate with other departments. QC/QA, compatibility, workable design and constructability of the design is the CONSULTANT's sole responsibility.

**TASK 5: Additional Services:**

1. CITY will provide written direction and a budget for any additional service to be performed. Written authorization must be obtained from the CITY prior to the CONSULTANT beginning additional services. The CITY shall not be responsible for additional work that the CONSULTANT performs prior to receiving written authorization.

# Exhibit A2

## Milpitas - Potential RW Extensions




S Summitpointe golf course
SV Spring Valley golf course

**EXHIBIT B1**

**COMPENSATION SCHEDULE**

IDMODELING
We can be more, together.

| Task | Project Task or Subtask Description | TA and QA/QC | Project Manager/ Project Engineer | Total Hours | Total Labor Costs | Subconsultants, Software, ODCs | Total Cost |
|---|---|---|---|---|---|---|---|
| | **Recycled System Model Analysis** | $195 | $165 | | | | |
| **1** | **Project Administration/Management** | **6** | **16** | **22** | **$3,810** | **$0** | **$3,810** |
| A | Project meetings, communications, scheduling, weekly updates, and data collection and review | 6 | 16 | 22 | $3,810 | | $3,810 |
| **2** | **Document Review and Scenario Development** | **2** | **12** | **14** | **$2,370** | **$0** | **$2,370** |
| A | The San Jose recycled model will be updated with Milpitas recycled water system facilities and demands based on information provided the City. The hydraulic modeling will include up to seven (7) scenarios along with associated data sets for performing the hydraulic analyses associated with the proposed expansion of the San Jose connection. | 2 | 12 | 14 | $2,370 | | $2,370 |
| **3** | **Model Analyses** | **33** | **177** | **210** | **$35,640** | **$0** | **$35,640** |
| A | Scenario 1: Pipe segments 1, 2, and 3 with storage tank sized for golf course needs only | 2 | 10 | 12 | $2,040 | | $2,040 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| B | Scenario 2: Pipe segments 1, 2, and 3 with storage tank sized for City operations | 2 | 10 | 12 | $2,040 | | $2,040 |
| C | Scenario 3: Pipe segments 1, 4, and 5 | 2 | 10 | 12 | $2,040 | | $2,040 |
| D | Scenario 4: Pipe segments 1, 2, 3, 4, and 5 with booster pumping and storage tank sized for City operations | 2 | 10 | 12 | $2,040 | | $2,040 |
| E | Scenario 5: Pipe segments 1, 2, 3, 4, and 5 with booster pumping and storage tank sized for golf course needs only | 2 | 10 | 12 | $2,040 | | $2,040 |
| F | Scenario 6: Pipe segments 1 and 4 only | 2 | 10 | 12 | $2,040 | | $2,040 |
| G | Scenario 7: Determine available fire flow at 20 psi for all model junctions with all segments included. Scenario will include proposed booster pumping and storage tank sized for City operations. | 2 | 10 | 12 | $2,040 | | $2,040 |
| H | Scenario 8: Pipe segments 1 and 3 | 2 | 10 | 12 | $2,040 | | $2,040 |
| I | Scenario 9: Pipe segments 1, 3, and 4 with no looping | 2 | 10 | 12 | $2,040 | | $2,040 |
| J | Allowance for additional model scenarios as determined by City, including deliverables. | 15 | 87 | 102 | $17,280 | | $17,280 |
| **4** | **Deliverables** | **8** | **40** | **48** | **$8,160** | **$0** | **$8,160** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| A | Develop summary figures and tables for the model results with focus on system pressures and pipe flow and velocity. A summary technical memorandum will be developed detailing the modeling process, scenario development, and results for each scenario identified above. Pipeline, pumping, and storage tank sizing will be recommended (as applicable) and tabulated for each scenario analyzed. | 8 | 40 | 48 | $8,160 | | $8,160 |
| | **TOTAL** | **49** | **245** | **294** | **$49,980** | **$0** | **$49,980** |

***PROJECT ASSUMPTIONS***

1. All deliverables will be provided in electronic format.

2. The San Jose recycled system model will be used as the basis for the hydraulic analyses.

3. All project meetings will be via teleconference or online (WebEx).

**EXHIBIT B2 Compensation Schedule**

| | |
|---|---|
| **Client/Address:** | City of Milpitas<br>455 East Calaveras Boulevard<br>Milpitas, CA 95035 |
| **Project Name:** | Recycled Water Modeling as expansion of San Jose SBWR Connection |
| **Effective Date:** | Term of Agreement |

## Rate Schedule

### Personnel Compensation

| Classification | Hourly Rate |
|---|---|
| Technical Advisor/QA-QC | $195 |
| Project Manager/Project Engineer | $165 |

The above Hourly Rates include normal and incidental costs such as routine communications, postage and office supplies.

### Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with work, will be at cost plus ten percent for items such as:

a. Maps photographs, reproductions, printing, equipment rental, and special supplies related to the work.

b. Outside computer processing, computation, and proprietary programs purchased for the work.

Other in-house charges for prints and reproduction, equipment usage, etc. will be billed at standard company rates.

Mileage will be billed at the IRS standard mileage rate, currently $0.56/mile

Excise and gross receipts taxes, if any, will be added as a direct expense.

## EXHIBIT C

## INSURANCE DOCUMENTS

***23B**

**City of Milpitas, California**

**BUDGET CHANGE FORM**

| Type of Change | From | | To | |
|---|---|---|---|---|
| | **Account** | **Amount** | **Account** | **Amount** |
| **Check one:**<br>☒ **Budget Appropriation**<br>☐ **Budget Transfer** | **400-2970**<br>**401-951-7118-15-3899** | **$ 49,980**<br>**$49,980** | **400-3999**<br>**401-951-7118-7-4800** | **$ 49,980**<br>**$49,980** |

**Explain the reason for the budget change:**

**Background**: On May 5, 2015, Council approved a work plan for the water supply augmentation feasibility study as prepared by Water Solutions, Inc. The 3 primary areas to pursue are: conservation program, groundwater well system improvements, and recycled water system extensions. Recycled water extensions are planned east of I-680 to serve landscaping for hillside golf courses, schools, and parks.

The City began design of the first phase of the recycled water system expansion on June 17, 2014 to extend the recycled water system to the Sports Center and Cardoza Park. The City is seeking grant, loan, and/or bond funding for construction of this phase and design of future phases. The applications for State and Federal funding require a detailed project description, map showing improvements, feasibility report, environmental review, and estimated construction costs. Hydraulic modeling is required to determine pipeline size, and location and size of a pump station and reservoir. ID Modeling has provided hydraulic modeling services to the City of San Jose for the South Bay Water Recycling system, which serves the Cities of Santa Clara, San Jose and Milpitas. Staff has negotiated with ID Modeling for the modeling of the proposed recycled water system extensions to not exceed the amount of $49,980. A budget appropriation in the amount of $49,980 is required to perform this work.

**Alternative:** If this Agreement is not approved, the City would not be able to submit a complete funding application to State and Federal programs, and would not be eligible for any grant, loan, or bond funding for the desired recycled water pipeline extension.

**California Environmental Quality Act**: The Agreement is not a "Project" under CEQA as there will be no physical change to the environment by the execution of the agreement. This action is also exempt under CEQA Guidelines Section 15262 (Feasibility and Planning Studies).

**Fiscal Impact**: A budget appropriation of $49,980 is required from the Water Fund. The proposed water rate increase that was introduced at the May 19 Council meeting includes funding to issue $15 million debt service for water supply projects. The City will use this funding to begin the work plan tasks; however the debt service funding is expected to be available in early 2016. Grants typically require the City to perform the work and submit documentation for reimbursement.

**Recommendation:**

1. Approve an agreement with ID Modeling in an amount not to exceed $49,980.00 for a term from June 2, 2015 to July 31, 2016.
2. Approve a budget appropriation of $49,980 from the water fund to CIP No. 7118.

☒ **Check if City Council Approval required.** **Meeting Date**: June 2, 2015

| | | |
|---|---|---|
| **Requested by:** | Marilyn Nickel, Associate Civil Engineer | **Date:** May 26, 2015 |
| **Reviewed by:** | **Finance Director:** D C Kee | **Date:** 5/27/15 |
| **Approved by:** | **City Manager:** | **Date:** |
| **Date approved by City Council, if required:** | **Confirmed by:** | |

**FI/24786/V** **Form 30-222 (Rev. 1/92)**

***24**

**SEVENTH AMENDMENT TO THE MASTER AGREEMENT**

**BETWEEN THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

**AND THE CITY OF MILPITAS RELATING TO THE SILICON VALLEY**

**RAPID TRANSIT PROGRAM BERRYESSA EXTENSION PROJECT**

---

This Seventh Amendment to the Master Agreement between the Santa Clara Valley Transportation Authority and the City of Milpitas Relating to the Silicon Valley Rapid Transit Program Berryessa Extension Project ("Seventh Amendment") is entered into by and between the City of Milpitas, a general law city of the State of California (hereafter referred to as "City") and the Santa Clara Valley Transportation Authority, a public transit district (hereafter referred to as "VTA") (collectively, the "Parties"). This Seventh Amendment is effective as of the last date set forth by the Parties executing this Seventh Amendment.

**RECITALS**

WHEREAS, the Parties entered into a Master Agreement to memorialize the Parties' consultation and cooperation, define their respective rights and obligations, and ensure future cooperation between VTA and the City in connection with the Silicon Valley Berryessa Extension Project ("Project" or "SVBX"), on September 10, 2010 (hereafter referred to as the "Master Agreement") and the Parties have subsequently entered into Amendment No. 1 on March 12, 2012, Amendment No. 2 on December 7, 2011, Amendment No. 3 on June 7, 2012, Amendment No. 4 on September 18, 2012, Amendment No. 5 on April 16, 2013, and Amendment No. 6 on July 31, 2014 as further described in the amendments; and

WHEREAS, the Master Agreement identified a list of City-owned utilities that would potentially be impacted by SVBX, and stated that the Parties would enter into a separate agreement to allow VTA to modify or relocate those City-owned utilities and define cost sharing by the Parties; and

WHEREAS, on March 12, 2012, the City and VTA entered into the First Amendment to the Master Agreement ("First Amendment"), which refined the list of City-owned utilities affected by SVBX, provided agreed upon unit costs for various types of work and established cost sharing responsibilities of the Parties; and

WHEREAS, in the course of design and construction of SVBX, the Parties have eliminated some of the elements of utility work and added other items of City infrastructure to the Project, creating a need to update the list of City-owned utilities and costs provided in the First Amendment;

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

1. <u>Exhibit D</u> entitled "Utility Cost Sharing" attached to the First Amendment is repealed and replaced in its entirety with the attached <u>Revised Exhibit D</u>, incorporated fully herein.

2. All other provisions of the Master Agreement, as amended, shall remain in full force and effect.

3. Each person signing this Seventh Amendment represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Seventh Amendment. Each Party represents and warrants to the other that the execution and delivery of the Seventh Amendment and the performance of such Party's obligations hereunder have been duly authorized and that the Seventh Amendment is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

WITNESS THE EXECUTION HEREOF on the day and year last written below.

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

By: ______________________________
Nuria Fernandez
General Manager

Date: __________________________

APPROVED AS TO FORM:

By: ______________________________
General Counsel

**CITY OF MILPITAS**

By:______________________________
City Manager

Date: __________________________

APPROVED AS TO FORM:

By:______________________________
City Attorney

## Revised Exhibit D - Utility Cost-Sharing

**BACKGROUND:** VTA and the City have consulted on the design, engineering, and urban planning aspects of the Project. The City desires to cooperate with VTA to facilitate the construction and operation of the Project and VTA recognizes the importance of public health, safety and various other public services, which the City provides to the community for economic and quality of life benefits. Construction of the BART guideway and stations will require reconstruction or relocation of existing City infrastructure, including roads and utilities. The project will also relocate infrastructure owned by other agencies and VTA will need to coordinate these relocations to minimize temporary and permanent impacts on all Parties and the public.

VTA and City have reviewed the potentially affected City-owned utilities identified in Exhibit D of Amendment No. 1 ofthe Master Agreement and now mutually agree that not all items listed in Exhibit D shall be modified and/or relocated. In addition, the City desires to upsize selected facilities, install new facilities for future utilities (over and above Master Plan expansions), and modify selected facilities. This Revised Exhibit D provides clarification and revisions to the utilities identified in Exhibit D of Amendment No. 1 of the Master Agreement. Table D-1 provides the agreed upon unit costs for various types of SVBX work. Table D-2 identifies the updated list of improvements, estimated costs, and establishes cost sharing responsibilities for SVBX work. Table D-3 identifies the list of improvements, estimated costs, and establishes cost sharing responsibilities for Non-SVBX Work as defined below. Exhibit D-4 indicates the approximate location of the affected utilities.

**ASSUMPTIONS:**

1. VTA is responsible for all costs related to SVBX in-kind utility relocations and Master Plan projects defined as Base Level in Section 2 of the Master Agreement.

2. Concurrent Non-Project Activities are funded by VTA, the City of Milpitas, or shared between the Parties.

3. The City of Milpitas agrees to pay for:

    a. The differential in material and construction costs when upsizing utilities that must be relocated to accommodate the Project.

    b. Engineering, mobilization/demobilization, materials, construction costs, pavement removal and replacement, traffic control, dewatering/shoring/thrust protection/miscellaneous, and environmental/legal/administration costs for work that is not necessitated by the Project, such as installing new facilities or upsizing an undisturbed pipeline.

4. VTA agrees to pay for:

   a. Engineering, mobilization/demobilization, pavement removal and replacement, traffic control, dewatering/shoring/thrust protection/miscellaneous, and environmental/legal/administration costs for upsizing utility pipes that will be relocated as part of the Base Level Project work.

5. The Parties agree that administrative costs to identify actual costs for each improvement will quickly exceed and dwarf the minor differences between actual and assumed fixed pipeline costs and therefore agree upon the assumed fixed costs shown in Table D-1, which the parties believe reasonably approximate the actual cost for VTA to construct the improvements.

Table D-1 Fixed Unit Costs for City of Milpitas Utility Improvements

| | | |
|---|---|---|
| a. | Water up to 24”, sewer, and storm pipe installation in City streets. Costs include pipe material, installation, appurtenances, excavation, backfill, pavement removal and replacement, and traffic control for open cut construction. | $18/ linear foot/inch diameter |
| b. | Water pipe installation 24” and larger in City streets. Costs include pipe material, installation, appurtenances, excavation, backfill, pavement removal and replacement, and traffic control for open cut construction. | $26/ linear foot/inch diameter |
| c. | Water up to 24”, sewer, and storm pipe installation in unpaved areas. Costs include pipe material, installation, appurtenances, excavation and backfill, for unpaved construction. | $13/ linear foot/inch diameter |
| d. | Water pipe 24” and larger, installation in unpaved areas. Costs include pipe material, installation, appurtenances, excavation and backfill, for unpaved construction. | $21/ linear foot/inch diameter |
| e. | Casings Costs including material and installation, in bridge deck. | $4.80/linear foot/inch diameter |
| f. | Water, sewer, and storm pipe installation in bridge decks. Costs include material and installation. | $6.75/ linear foot/inch diameter |
| g. | Asbestos pipe removal | $78.00/ linear foot/inch diameter |
| h. | Horizontal directional drill – 14 inch diameter HDPE casing | $224.00/ linear foot |
| i. | Allowance for dewatering/shoring/thrust protection/miscellaneous | 5% of raw construction cost total |

| | | |
|---|---|---|
| j. | Allowance for mobilization/demobilization | 8% of raw construction cost total |
| k. | Allowance for construction contingency | 20% of raw construction cost total |
| l. | Allowance for engineering | 10% of total construction cost |
| m. | Allowance for environmental, legal, administration | 20% of total construction cost |
| n. | These costs are indexed to the March 2011 San Francisco ENR CCI of 10151.04 and final payment to VTA shall be based on costs escalated to the March 2015 San Francisco ENR CCI, or to the month in which the reimbursement is actually paid. | |

6. **PAYMENT SCHEDULE FOR SVBX WORK:** The City will program a capital improvement project in the City's 5 year Capital Improvement Program to accumulate and appropriate funds for the City's cost share, such that the City's utility-related reimbursement payment is available by July 30, 2015. The City will pay for those utilities completed and accepted by the City by July 1, 2015 on July 30, 2015. VTA shall invoice for reimbursement for each remaining City utility after City's initial acceptance of each utility, and the City shall reimburse VTA, within 30 days after receipt of an approved invoice, after July 30, 2015.

7. **NON-SVBX WORK**:

    a. City has requested, for its convenience, construction of several infrastructure items that are not directly affected by SVBX construction ("Non-SVBX Work"). These items are identified in Table D-3. Notwithstanding the payment terms defined herein, City shall pay the cost of any item of Non-SVBX Work to VTA, including markups as shown in Table D-3, 30 days prior to advertisement of the applicable construction contract or, in the case of change order work, prior to issuance of the applicable change order. VTA shall not be obligated to advertise or construct any part of the Non-SVBX Work for which such payment has not been made. All unexpended funds deposited in advance by City to VTA for Non-SVBX Work shall immediately be reimbursed to City upon City's final acceptance of the City Infrastructure.

    b. Portions of the Non-SVBX Work may be constructed as part of a separate project being advanced cooperatively by VTA, the County of Santa Clara, and the Santa Clara Valley Water District (the "C640" project).

c. The following terms and conditions shall apply to all Non-SVBX Work:

(i). City shall cooperate fully and expeditiously with VTA regarding:

(1) Issuing an encroachment permit for all work in City right of way or easements;

(2) Construction inspection for City infrastructure;

(3) Acceptance of final constructed City infrastructure; and

(4) Approval of traffic control plans for all phases of construction to the extent they affect City streets.

(ii) In no event shall VTA be required to delay the progress of SVBX to accommodate the construction of the Non-SVBX Work.

(iii) VTA will endeavor to manage and construct the Non-SVBX Work within the original estimated cost. However, when VTA determines that an adjustment in either the scope of work or approved costs for the Non-SVBX Work is warranted, a change order request will be prepared by VTA and provided to City. City shall review the change order request and either approve or disapprove it within fourteen (14) calendar days of receipt. If no response is received within the review period, VTA may, at its option, assume the change is approved and proceed accordingly. Any disapproval of a change order request shall include a written explanation of the disapproval and a statement of any revisions that would make the change order acceptable. When VTA has obtained approval from City, VTA shall be authorized to execute the change order and issue it to the contractor.

In the event that VTA determines in good faith that an urgent condition requires immediate issuance of a change order, VTA will attempt to confer with the City to the extent feasible but shall be authorized to immediately execute such change order, which shall be binding on the City.

# Table D-2 List of Improvements, SVBX Work

| Loc. # | Description/Location | Estimated Cost[1] | Allowances Applied | Notes |
|---|---|---|---|---|
| 19 | Replace VCP pipe/CMP casing with new pipe at Curtis Avenue | **$7,656** | CC(20%) & Engr(10%) = 30% | VTA would otherwise replace 15-inch pipe in kind. City is reponsible for cost differential to install 18-inch carrier pipe. The size of the existing casing (30") is expected to still be adequate for the new pipe. SSH extended pipe and casing ~20 additional linear feet under RCB storm drain in order to eliminate (3)~90 degree bends in sewer and provide better access to SSMH from east. (151'~18"SS, 128'~24"Casing, upsize pipe only (3"), casing upsize not included since SSH chose to install new for ease of construction, i.e. no bypass). |
| 22 | Milpitas Station Housing/Citation/Swenson Development | **$43,875** | Misc(5%) & CC(20%) & Engr(10%) = 35% | City to pay costs associated with pipe materials and installation for lateral lines in future Street A (Garden St) to serve future development. Developer is responsible to provide exact horizontal locations. City to pay for 35' of 18" waterline, 45' of 36" storm drain, 25' of 10" sewer (Unpaved Areas cost factors). |
| 35A | New 12" RW pipe and 21" casing in SMB extension to Capitol | **See notes** | n/a | *No cost to City per Amendment #1, including extension to Capitol, except that any portion within the East Segment as defined in the Master Agreement would be eligible for reimbursement up to the $17 million cap as part of S. Milpitas Blvd construction cost.* |
| 38 | SCVWD turnout - Zone 2 PRV in South Milpitas Blvd | **$38,750** | Misc(5%), CC(20%), Engr(10%), & ELA(20%) = 55% | All costs for installing the 24" turnout, including design, right-of-way and permitting/review costs with SCVWD will be a COM responsibility. 20" nozzle, butterfly valve and blind flange installed at Montague/Piper - $25K is estimate only; City to pay actual costs. This item does not include any costs that may arise from separate nozzle City is discussing with SCVWD further north in Piper Drive. |

| | | | | |
|---|---|---|---|---|
| 40A | Montague Expressway to Capitol Avenue | **$95,663** | Misc(5%) & CC(20%) = 25% | Cost differential to install 18-inch pipeline in lieu of 12-inch pipeline when relocating this segment of COM water main. 6" differential for 935' (120' in street, 815' not in street). |
| 40A2 | Capitol PRV Northward to Tie-in Point - Zone 2 | **$40,095** | Misc(5%), CC(20%) & Engr(10%) = 35% | City to pay costs associated with upgrading 12-inch pipeline to an 18-inch pipeline when relocating this segment of COM water main. 6" differential for 275' upsize in place in street (from PRV to angle point going westerly across SVBX). |
| 40B | Montague Expressway to Near Storm and Sewer Tie in Point | **$248,775** | Misc(5%) & CC(20%) = 25% | Cost differential to install 18-inch pipeline in lieu of 12-inch pipeline. 6" differential for 2040' - Across Montague and north on Piper (1330' in street, 710' not). |
| 41 | Existing Capitol Avenue Pressure Reducing Valve | **$260,632** | Misc (5%) | Cost differential for increasing the size from 12" to 18" to be paid by City. Actual CCO amount was $224,221 inc. engineering, plus allowances of $12K each for traffic control and "unforeseen conditions". Those allowances are included in the PO amount but would be paid by City only if contractor actually billed them to VTA. Cost shown here includes allowances, with 5% admin fee applied. **NOTE: City has already issued a Puchase Order to VTA for this work; this cost will be deducted from the amount of this amendment if previously invoiced by VTA.** |
| 42 | Montague Expressway Crossing - Zone 2 | **$6,081** | Misc(5%), CC(20%) & Engr(10%)=35% | Cost differential to install 18-inch pipeline in lieu of 12-inch pipeline when replacing the existing COM water main within the Montague bridge deck. 6" differential for casing length & carrier pipe = (1) at 65' each. Additional pipe length (300'-130'=170') in #40B. |
| 45 | Capitol Avenue Crossing - Zone 2 | **$46,656** | Misc(5%), CC(20%) & Engr(10%) = | Cost differential to install 18-inch pipeline in lieu of 12-inch pipeline when relocating the COM water main within the Capitol Avenue |

| | | | | |
|---|---|---|---|---|
| | | | 35% | bridge. No casing since above deck, 320' of pipe within Capitol and crossing. |
| 47A | Capitol PRV Northward to Tie-in Point - Zone 1 | **$36,248** | Misc(5%), CC(20%) & Engr(10%) = 35% | City to pay costs associated with replacing 12-inch pipeline with an 18-inch pipeline as part of the relocation of COM water main. 6" differential for 325' with no casing since above deck (50' in street, 275' not in street). |
| 48 | Lundy Place Zone 1 | **$25,782** | Misc(5%), CC(20%) & Engr(10%) = 35% | Where VTA is relocating the COM water main into a casing pipe at the BART guideway crossing at Lundy Place, provide 18" pipe within casing in lieu of 12" pipe. Remainder of pipe outside the casing can still be 12". 6" differential for 135' of casing and 195' of 18" waterline. |
| 104 | 12" Water valve at Curtis Ave (west) | **$16,929** | Misc (5%) | City requested new 12" valve on west side. Project to install new valve on the west side of SVBX to replace the eixsting valve found on the east side that could not be replaced. Actual change order price = $32,245. One valve was VTA responsibility and one was city betterment, so gross amount is charged 50% to city. 5% administrative cost applied for VTA coordination and processing of CCO. |
| 105 | 8" Water valve at Capitol (replace for "Lucky 7") | **$3,804** | Misc (5%) | Leaking old valve to be replaced by SSH. Actual change order price = $3,623, plus 5% administrative cost. |
| | **Total** | **$870,945** | | |

1. Where line item costs are based on Table D-1 values, the final payable amounts will be escalated based on ENR Construction Cost Index in accordance with the terms of the Master Agreement.

**Table D-3 List of Improvements, Non-SVBX Work**

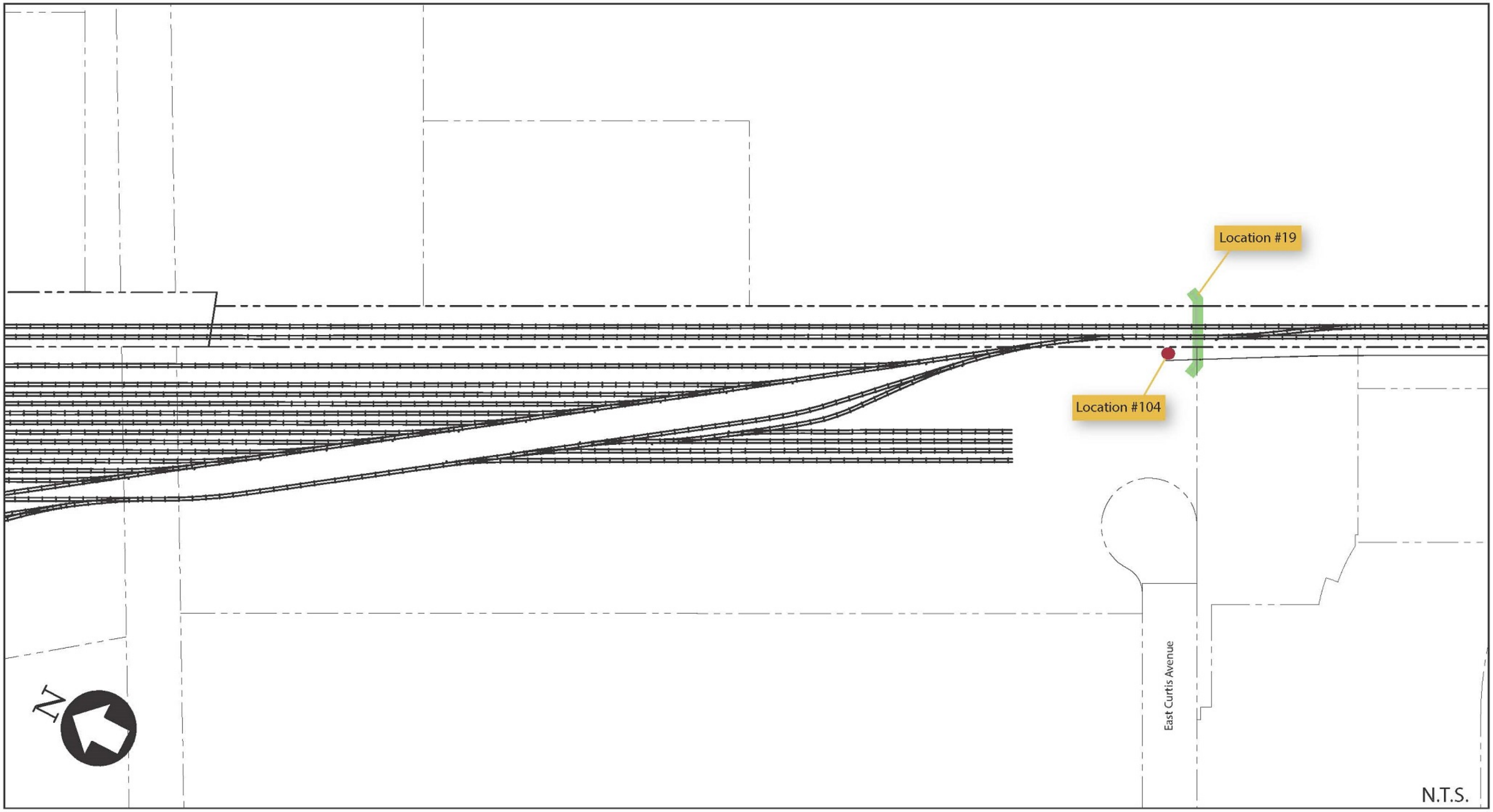
| Loc. # | Description/Location | Estimated Cost[1] | "Allowances" Applied | Notes |
|---|---|---|---|---|
| 101 | 8" Recyled water in Montague | **$629,964** | Mob (10%) & Misc(5%) & CC(20%) = 35% | City requested new 8" recycled water to connect from South Milpitas Blvd along Montague Expressway. Does not include SMB, does include 800 lf ~ Citation 2 frontage. 3168 LF~8" DIP @ $130/LF & 15 EA~8" Valve @ $2,400 EA & 4 EA~2" ARV @ $3,200 EA & 2 EA~2" BO @ $3000 EA. No design cost since design by HMH under COM contract. Gladding Court component is by developers in future, except for 50 lf of 8" stub only, which is included in this cost. |
| 103 | 18" waterline in Montague Expwy | **$579,056** | Mob (10%) & Misc(5%) & CC(20%) =35% | Extend 18" waterline easterly from current terminus just east of Piper Drive. 1275 LF~18" DIP @ $240/LF & 6 EA~18" Valve @ $7,400 EA plus 212 LF~12" DIP @ $140/LF & 2 EA~12" Valve @ $3,500 EA plus 1265 LF~Abandon Ex Water @ $15/LF plus 2 EA~2" ARV @ $3,200 EA & 3 EA~2" BO @ $3,000 EA & 51'~6" DIP @ $25/LF & 1~6" valve @$2,200 & 1 FH @ $4,000 |
| 106 | Connect 8" recycled water line in S Milpitas Blvd north of Montague and under UPRR to connect with existing stub | **$578,273** | Mob (10%) Misc (5%) CC (20%) =35% | City requested new recycled water line to serve the TASP area. No design cost since design is by HMH under County contract. This item will be listed as a separate bid item under VTA's C640 contract and paid by city at actual cost plus VTA admin/CC. 605 LF~8" PVC @ $150/LF & 2 EA~8" Valve @ $2,400 EA plus 208 LF~14" steel casing @ $1,600/LF |
| 108 | Recycled Water services along Montague | **$19,127** | Mob (10%) & Misc(5%) & CC(20%) =35% | City requested new recycled water services for future developments along expwy. 644 LF~2" Copper @ $22/LF |
| 110 | Four new TASP streetlights on So. Milpitas | **$8,100** | Mob (10%) & Misc(5%) & | City requested new TASP curved poles as part of Montague Widening project. Estimated |

| | | | | |
|---|---|---|---|---|
| | Blvd. north of Montague | | CC(20%) =35% | price of $5,000 each installed, or $1,500 more than standard lights. 5% administrative cost applied for VTA coordination and processing of CCO along with 20% for construction contingency. City expense is fixtures only as County/VTA would have otherwise been constructing the electrical system for standard lights. |
| 111 | 12" Sanitary Sewer along Montague | **$229,473** | Mob (10%) & Misc(5%) & CC(20%) =35% | City requested to upsize existing 10" in conformance with Master Plan requirements. 659 LF of 12" PVC sewer at $220/LF and 2 MH's at $12,500 each (based on HMH Cost Estimate). 5% administrative cost applied for VTA coordination and processing of CCO along with 20% for construction contingency. |
| 112 | Five additional TASP streetlights along Montague @ Falcon Dr. | **$67,500** | Mob (10%) & Misc(5%) & CC(20%) =35% | City requested new TASP curved poles as part of Montague Widening project. $50,000 City cost based on HMH estimate. 5% administrative cost applied for VTA coordination and processing of CCO along with 20% for construction contingency. |
| 113 | Median landscaping along Montague except for trees (by County) | **$529,509** | Mob (10%) & Misc(5%) & CC(20%) =35% | City requested median landscaping along Montague. County to pay for new trees as part of "project mitigation" and City to pay for the rest. $392,229 estimated price for shrubs and irrigation (based on HMH Cost Estimate). 5% administrative cost applied for VTA coordination and processing of CCO along with 20% for construction contingency. Listed cost is estimate only; City will pay VTA's actual cost plus 35% markups. |
| 112 | Five additional TASP streetlights along Montague @ Falcon Dr. | **$67,500** | Mob (10%) & Misc(5%) & CC(20%) =35% | City requested new TASP curved poles as part of Montague Widening project. $50,000 City cost based on HMH estimate. 5% administrative cost applied for VTA coordination and processing of CCO along with 20% for construction contingency. |

| | | | | |
|---|---|---|---|---|
| 114 | Picket style/wire mesh fencing - upgrade from chain link along Montague and So. Milpitas Blvd. | **$122,850** | Mob (10%) & Misc(5%) & CC(20%) =35% | City requested to upgrade fencing on walls along Montague and South Milpitas Blvd from standard Chain Link to Black picket. Listed cost is estimate only ($70/lf difference for 1,300 linear feet); City to pay VTA's actual cost plus 35% markups. |
| 115 | Smart Meter antenna infrastructure on parking garage | **$13,500** | Mob (10%) & Misc(5%) & CC(20%) =35% | City requested infrastructure (electrical rough-in, backing for mounting, etc.) for new "smart meter" antenna on top of parking garage (C730). Placeholder amount of $10,000 to include design & coordination, construction contingency, and 5% administrative costs for VTA coordination. This covers capital costs only, does not include license fees. |
| | Separate performance and labor-and-materials bonds naming COM in addition to VTA's bonds. | **$45,261** | | Estimated at 2% of improvement cost. VTA to invoice COM the actual bond premium amounts. |
| | **Total** | **$2,822,611** | | |

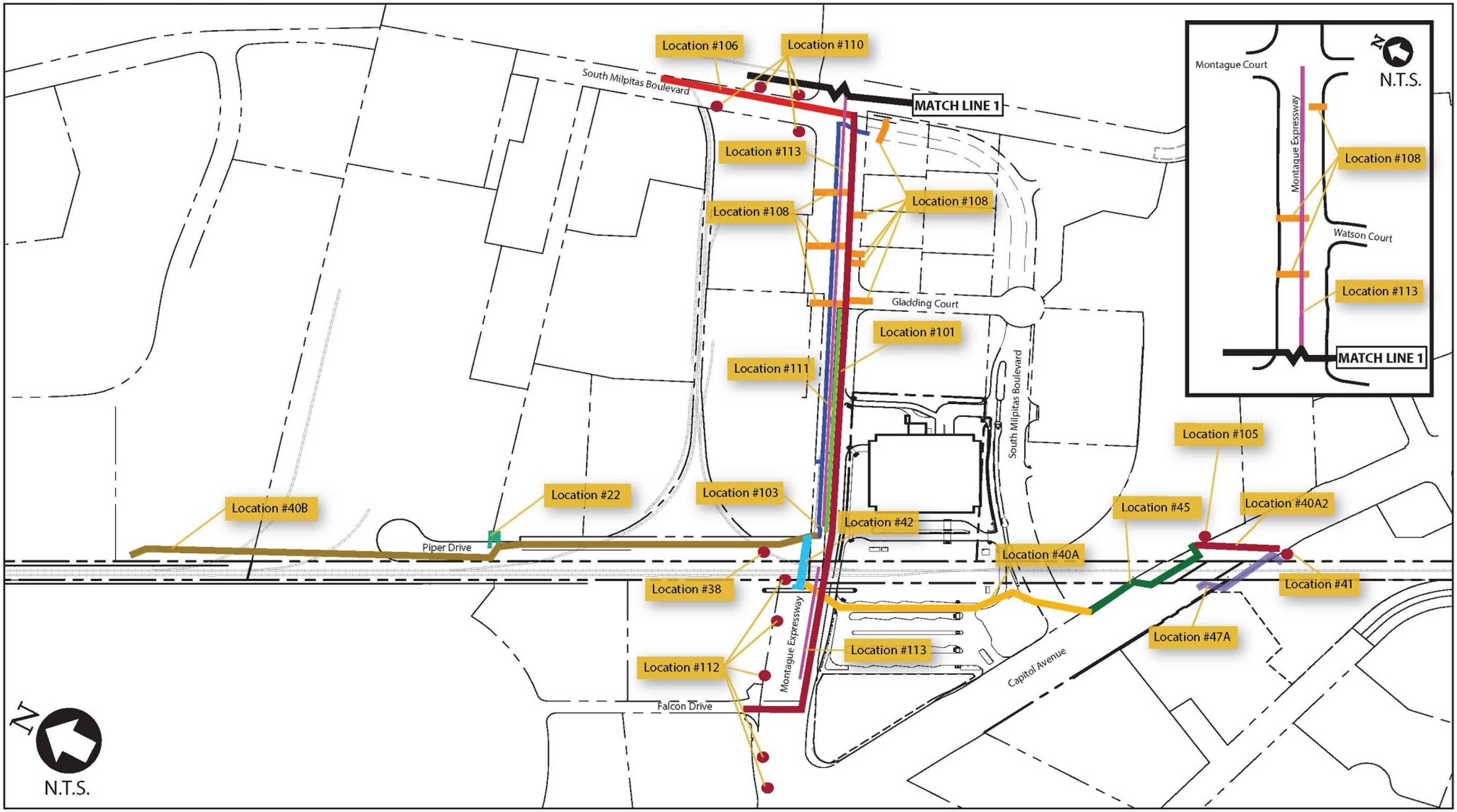
1. Where line item costs are based on Table D-1 values, the final payable amounts will be escalated based on ENR Construction Cost Index in accordance with the terms of the Master Agreement.

## Exhibit D-4 Utility Relocations (following three pages)



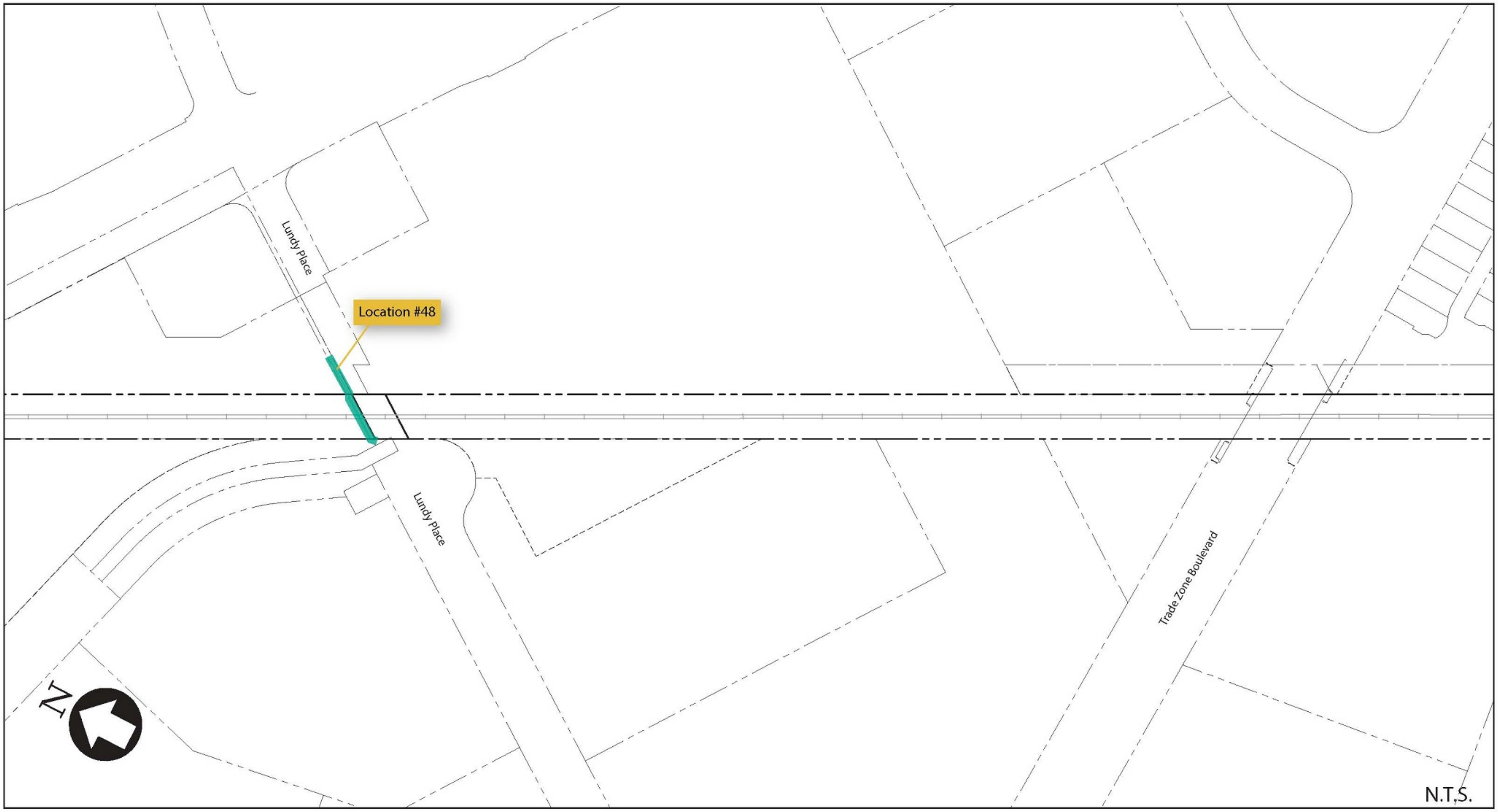

Kimley»Horn

EXHIBIT D-4: SHEET 1 OF 3
Utility Relocation Exhibit




Kimley»Horn

EXHIBIT D-4: SHEET 2 OF 3
Utility Relocation Exhibit




Kimley»Horn

EXHIBIT D-4: SHEET 3 OR 3
Utility Relocation Exhibit

*25A

Cayenta
A Division of Harris Computer Systems

| | |
|---|---|
| **Invoice** | **MN00082570** |
| **Date** | **4/20/2015** |
| **Page** | **1 of 1** |

Remit To: N. Harris Computer Corporation
62133 Collections Center Drive
Chicago, IL 60693-0621

**Ship To**
City of Milpitas
Attention: Flora Tzeng
455 E. Calaveras Blvd
Milpitas, CA 95035
USA

**Bill to**
City of Milpitas
Attention: Flora Tzeng
455 E. Calaveras Blvd
Milpitas, CA 95035
USA

| PO Number | Customer No. | Salesperson ID | Shipping Method | Payment Terms |
|---|---|---|---|---|
| | MILP | | LOCAL DELIVERY | Receipt |

| Ordered | Item Number | Description | Unit Price | Ext Price |
|---|---|---|---|---|
| 1.00 | NOTE | Annual Maintenance Support July 1, 2015 to June 30, 2016 | US$0.00 | US$0.00 |
| 1.00 | CAY - MAINT | Utilities | US$33,614.48 | US$33,614.48 |
| 1.00 | CAY - MAINT | Accounts Payable | US$13,930.37 | US$13,930.37 |
| 1.00 | CAY - MAINT | Accounts Receivable | US$18,242.16 | US$18,242.16 |
| 1.00 | CAY - MAINT | General Ledger | US$22,918.78 | US$22,918.78 |
| 1.00 | CAY - MAINT | Project Accounting | US$5,804.32 | US$5,804.32 |
| 1.00 | CAY - MAINT | Human Resources | US$20,232.20 | US$20,232.20 |
| 1.00 | CAY - MAINT | Payroll | US$20,232.20 | US$20,232.20 |
| 1.00 | CAY - MAINT | Purchase Orders | US$13,930.37 | US$13,930.37 |
| 1.00 | CAY - TPM | Uniface | US$2,342.27 | US$2,342.27 |

| | |
|---|---|
| Subtotal | US$151,247.15 |
| Misc | US$0.00 |
| Tax | US$102.47 |
| Freight | US$0.00 |
| Trade Discount | US$0.00 |
| Total | US$151,349.62 |

Invoice Questions? Please call Maria El Rami at 613-226-5511 ext 2242 OR e-mail melrami@harriscomputer.com

*25B

# Software / Hardware Maintenance Agreement **RENEWAL**

***Document and Data Management Solutions***

197 East Hamilton Avenue
Campbell, CA  95008
Phone:  800.233.5006    Fax:  408.866.4803

| **Send Invoices To:** | | **Software / Hardware Location:** | |
|---|---|---|---|
| **Client:** | City of Milpitas | **Client:** | City of Milpitas |
| **Attn:** | Mike Luu | **Attn:** | Mike Luu |
| **Address:** | 1265 N. Milpitas Blvd. | **Address:** | 1265 N. Milpitas Blvd. |
| **City, State, Zip:** | Milpitas, CA  95035 | **City, State, Zip:** | Milpitas, CA  95035 |
| **Phone:** | (408) 586-2706 | **Phone:** | (408) 586-2706 |

| Client ID | Account Manager | Client P.O. # | Peelle Invoice # |
|---|---|---|---|
| CM6288 | Jim Detrick | | |

| Qty. | Product Description | Service Level | Start Date | End Date | Unit Cost | Ext. Cost |
|---|---|---|---|---|---|---|
| 35 | EMC Documentum<br>AX/WX Concurrent Connection | Monday – Friday<br>8:00am to 5:00pm PST | 6/29/2015 | 6/28/2016 | $333.00 | $11,655.00 |
| 1 | EMC Documentum<br>OCR Server | Monday – Friday<br>8:00am to 5:00pm PST | 6/29/2015 | 6/28/2016 | $381.00 | $381.00 |
| 1 | EMC Documentum<br>ProIndex Full Text Server | Monday – Friday<br>8:00am to 5:00pm PST | 6/29/2015 | 6/28/2016 | $571.00 | $571.00 |
| 2 | EMC Documentum<br>ProIndex Full Text Client | Monday – Friday<br>8:00am to 5:00pm PST | 6/29/2015 | 6/28/2016 | $38.00 | $76.00 |
| 1 | EMC Documentum<br>Web Access-Public Access License | Monday – Friday<br>8:00am to 5:00pm PST | 6/29/2015 | 6/28/2016 | $5,700.00 | $5,700.00 |
| 1 | EMC Documentum<br>Media Distribution Perpetual License | Monday – Friday<br>8:00am to 5:00pm PST | 6/29/2015 | 6/28/2016 | $941.00 | $941.00 |
| 3 | Kofax Image Products<br>Ascent Capture<br>(25K image/month volume license) | Monday – Friday<br>8:00am to 5:00pm PST | 6/29/2015 | 6/28/2016 | $875.00 | $2,625.00 |

**Continued**

# Software / Hardware Maintenance Agreement
# RENEWAL

***Document and Data Management Solutions***

197 East Hamilton Avenue
Campbell, CA 95008
Phone: 800.233.5006 Fax: 408.866.4803

**Send Invoices To:**

**Client:** City of Milpitas
**Attn:** Mike Luu
**Address:** 1265 N. Milpitas Blvd.
**City, State, Zip:** Milpitas, CA 95035
**Phone:** (408) 586-2706

**Software / Hardware Location:**

**Client:** City of Milpitas
**Attn:** Mike Luu
**Address:** 1265 N. Milpitas Blvd.
**City, State, Zip:** Milpitas, CA 95035
**Phone:** (408) 586-2706

| Client ID | Account Manager | Client PO # | Peelle Invoice # |
|---|---|---|---|
| CM6288 | Jim Detrick | | |

| Qty. | Product Description | Service Level | Start Date | End Date | Unit Cost | Ext. Cost |
|---|---|---|---|---|---|---|
| 1 | Fujitsu<br>fi-5750C VRS Document Scanner<br>S/N: 010447 | Monday – Friday<br>8:00am to 5:00pm PST | 6/29/2015 | 6/28/2016 | $1,195.00 | $1,195.00 |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | **Total:** | $23,144.00 |

**Notes:** The annual maintenance/support costs for the EMC Documentum and Kofax software products include all software updates. If required, on-site software support will be billed at the rate of $175.00 per hour, portal to portal, with a two-hour minimum charge.

Please acknowledge your acceptance with a signed copy of the Maintenance Agreement and your purchase order. Faxed copies are acceptable and may be faxed directly to the Contract Administration Department at 408.866.4803.

Donna Braxton / Contract Administrator 05/20/15

Authorized Peelle Representative / Title Date

Authorized Client Representative / Title Date

## AGREEMENT TERMS AND CONDITIONS

Included are the Terms and Conditions under which Peelle Technologies, Inc. (hereafter referred to as Peelle) will provide software and/or hardware maintenance/support services for the products listed within this Software/Hardware Maintenance Agreement (hereafter referred to as Client).

**1) Software Maintenance/Support Services**: Peelle will supply the following software maintenance/support services:

**(a)** Peelle shall provide all necessary telephone support for reporting and resolving problems with the software products covered by this Agreement, and shall be available to receive notification by the Client of any software problem. The Client must provide adequate information and documentation to enable Peelle to recreate the reported problem. If it is determined that there is no problem with the software products, Peelle will so inform the Client and, in such case, Peelle reserves the right to charge the Client for the services provided at Peelle's then current standard rates plus reasonable associated expenses. Notwithstanding the provisions of this section, Peelle makes no warranties that the maintenance/support provided hereunder will be successful in resolving any problems or in diagnosing faults.
**(b)** All software releases/updates made available by the software manufacturer during the term of this Agreement.

Service is available by calling 800-233-5006 or via the Internet at support@peelletech.com. Unless otherwise specified on page two (2) of this Agreement, Peelle agrees to use reasonable efforts to respond to the Client's service request within four (4) hours of receipt of notification. In the first instance, Peelle shall attempt to diagnose the reported problem via telephone, e-mail and/or remote access and, if considered appropriate, shall attempt to resolve the reported problem by requesting that the Client perform any required/standard operational maintenance or simple adjustments which the Client can reasonably be expected to conduct. If the reported problem is not resolved via telephone, e-mail and/or remote access, Peelle shall arrange for a system engineer to visit the Client's site during Peelle's normal business hours, which are defined as the hours between 8:00 a.m. and 5:00 p.m. PST, Monday through Friday (excluding Peelle company holidays).

**2) Hardware Maintenance/Support Services**: Peelle will supply the following hardware maintenance/support services:

**(a)** All parts, labor and materials necessary to maintain products covered by this Agreement.

Service is available by calling 800-233-5006 or via the Internet at support@peelletech.com. Unless otherwise specified on page two (2) of this Agreement, Peelle agrees to use reasonable efforts to respond to the Client's service request within twenty-four (24) hours of receipt of notification and services will be performed during Peelle's normal business hours. Normal business hours are defined as the hours between 8:00 a.m. and 5:00 p.m. PST, Monday through Friday (excluding Peelle company holidays).

**3) Charges**: Peelle will invoice Client for the total software/hardware maintenance/support services cost, including any applicable taxes. Client agrees to remit complete payment for the invoice in advance of the stated Agreement Start Date. An interest payment of 1.5% compounded monthly and any applicable software maintenance reinstatement fees imposed by the software manufacturer shall be added to those invoices not paid by the stated software maintenance Start Date.

**4) Client Responsibility**: Client is responsible for:

**(a)** Notifying Peelle in advance of any material changes to the supported system's components, including, but not limited to, the system's network, server/workstation hardware, operating system or security configuration.
**(b)** Having a valid backup of data at all times to maintain original operating system, data and application software.
**(c)** Promptly notifying Peelle of any need for service and making product(s) available to Peelle engineers.
**(d)** Running diagnostic tests on all non-supported system components (network, server/workstation hardware, operating system or security configuration) before having a product serviced under this Agreement.

**5) Limitations of Service**: Maintenance/support services provided under this Agreement do not include:

**(a)** Cost of bringing product(s) to operational status prior to placing them under maintenance.
**(b)** Costs related to the off or on-site implementation (including, but not limited to installation, configuration and training services) of software updates made available by the software manufacturer during the term of this Agreement.
**(c)** Costs related to the resolution of software problems caused by unapproved changes to the supported system's network, server/workstation hardware, operating system or security configuration.
**(d)** Repair of damage caused by; accidents, natural disaster, improper use, damage during transportation/relocation by Client, work performed on software/hardware by personnel other than Peelle employees/subcontractors, causes beyond Peelle's control.
**(e)** Furnishing consumable supplies or accessories as specified by the manufacturer.
**(f)** Hardware with missing or altered serial numbers.
**(g)** Repair of damage or increase in service time caused by the use of the product for purpose other than for which it was designed or beyond the manufacturer's specifications.

If services are required due to the above causes, Peelle will provide services at Peelle's then current standard service rates.

**6) Renewal**: This Agreement shall be in effect beginning on the Start Date as noted on pages one (1) and two (2) of this Agreement and continue through the End Date as noted on pages one (1) and two (2), unless sooner terminated as provided in Section 7 of this Agreement.

**7) Termination**: Client may terminate this Agreement for any reason with sixty (60) days written notice prior to the renewal anniversary date. Client may also terminate this Agreement if any material agreement or obligation contained or referred to in the Agreement has been breached by Peelle, provided that Client has given Peelle notice of such breach and there has been a failure to cure such breach, if curable, within thirty (30) days after receipt of such notice. Unless such breach has been cured, termination shall be effective thirty (30) days after receipt of such notice, and shall be without prejudice to any other right or remedy to which Client may be entitled either at law, in equity, or otherwise, including, without limitation, under this Agreement. Peelle may terminate this Agreement at any time for any reason with sixty (60) days written notice. Upon terminating the Agreement, Peelle will issue a prorated refund of any remaining prepaid Agreement coverage. The refund amount will be for the Peelle technical support component only and will not include prepaid, non-refundable maintenance/support fees paid to the software manufacturer(s) or third-party hardware service provider(s).

**8) Rate Changes**: The maintenance/support rates stated within this Agreement will not change during the effective dates specified for this Agreement. All rates are adjustable for maintenance/support coverage periods after the contract expiration date.

**9) Limitation of Liability**: Client must provide Peelle with notice of claims of damage, improper service, or lawsuit within thirty (30) days of service. Peelle shall not be liable for performance delays or for nonperformance due to causes beyond its reasonable control. For any material breach of this Agreement by Peelle, Client's remedy and Peelle's liability shall be limited to a refund of related maintenance/support fees paid during the period of breach, up to a maximum of twelve (12) months. The remedies provided herein are Client's sole and exclusive remedies. In no event will Peelle be liable for special, punitive, incidental, or consequential damages, whether based in contract, tort, or otherwise, including, without limitation, claims for loss or corruption of data or lost profit.

**10) Entire Agreement**: Client acknowledges that he/she has read this Agreement, understands it and agrees to be bound by Peelle's terms and conditions. Further, Client acknowledges that this Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written. This Agreement may not be modified or amended except by written instrument duly executed by the parties.

**11) Binding Effect**: This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors.

**12) Governing Law**: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

# MEETING MINUTES
# CITY OF MILPITAS

| | |
|---|---|
| **Minutes of:** | **Regular Meeting of Milpitas City Council** |
| **Date:** | **Tuesday, June 2, 2015** |
| **Time:** | **6:00 PM Closed Session / 7:00 PM Open** |
| **Location:** | **Council Chambers, Milpitas City Hall,<br>455 East Calaveras Blvd., Milpitas** |

---

**CALL TO ORDER**

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

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

**ABSENT:** None

Only one item would be for discussion regarding anticipated litigation (the first item on the agenda would not be discussed).

Mayor Esteves asked if the City Attorney Subcommittee would make a comprehensive review of total in-house legal costs, and have a specific recommendation to City Council at the next meeting, not solely an information item, including all costs of contracted outside legal costs.

**STUDY SESSION**

No study session on Serra Center was held at the request of the developer.

**CLOSED SESSION**

City Council convened in Closed Session to discuss a litigation matter.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

None out of Closed Session. Mayor Esteves noted the Study Session on the agenda was not held.

**PLEDGE**

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

**INVOCATION**

Mayor Esteves gave a prayer to start the meeting.

**MEETING MINUTES**

Motion: to approve minutes of May 19, 2015 City Council meeting, as amended

City Clerk noted two minor edits on page 6 of the draft meeting minutes: to add the number “5” to the Aye votes on the budget and include the figure $86,130,096 next to the appropriations limit.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendar/Schedule of Meetings for June 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**PUBLIC FORUM**

Rob Means, 1421 Yellowstone resident, displayed a website video regarding Personal Rapid Transit, a means of transit he wanted to promote.

Robert Marini, Milpitas resident, showed a chart displaying City of Milpitas with 3.42 persons per household from the state Department of Finance. He then displayed rates charged in Milpitas for sewer service and amounts for some commercial customers.

Ray Maglalang, Milpitas resident, invited all to view the lavender blue jacaranda trees in bloom around the City. He discussed various types of trees planted all around Milpitas over many years that have survived. He mentioned jacaranda trees specifically at the Yosemite crossover of I-680. He hoped to have jacaranda as the official City tree in Milpitas.

Garry Long, Silvera St. resident, spoke on proposed increased sewer rates. He cared about the difference between rates for single family homes and multi-family units, and how the city made its calculations.

Councilmember Giordano would like to have a response if the model for rate calculation was 40 years old, in advance of the adoption of the sewer rate ordinance. A memo from staff would help her and Council be knowledgeable. Councilmember Grilli responded that the City Council could have it as an agenda item topic at the next meeting.

Tom Valore, 670 Cardiff Place resident, mentioned a meeting on the Request for Proposals for the disposal and garbage contract. He was concerned about precluding the most cost-effective approach, to allow for combining both displosal and hauling into one proposal for savings. Various criteria for selection should be stipulated, he urged.

Voltaire Montemayor, Penitencia St. Milpitas resident, still saw signs to report odors. All cities should cooperate on this issue and find a solution.

Isaac Hughes, Milpitas resident, discussed an incident in which a dog bit him recently, belonging to Councilmember Grilli. He noted his injuries, a police report, and facts of the incident.

**ANNOUNCEMENTS**

Councilmember Grilli congratulated the Jain Center in Milpitas, with its new solar panel system unveiled last weekend, and congratulated the Milpitas Chamber of Commerce on its successful second annual International BBQ. Mayor Esteves complimented both of those organizations, also.

**ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. Three Councilmembers responded that they had received a campaign contribution related to agenda item no.3 (TEFRA Bonds for The Crossings at Montague development project): Mayor Esteves, Councilmembers Barbadillo and Grilli. Councilmember Barbadillo also said he had a conflict of interest on this item.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted with one change in order of items discussed

City Manager Tom Williams asked to move agenda item no. 8 (SCVWD report) to be heard first, prior to the public hearings.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Vice Mayor Montano requested to remove item no. 20 (Agreement with Jensen Landscape Services) from consent.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

| | |
|---|---|
| * 6. Odor Report | Received a current update of the odor control report. |
| * 9. Fee Waiver Request | Waived $680 fee for rental cost for outdoor Dixon Landing Park by Hindu Swayamsevak Sangh USA for its International Yoga Day event on June 21, 2015. |
| *10. New CIP No. 4278 | 1. Approved new CIP Project, Disadvantaged Community Americans with Disabilities Act (ADA) Curb Ramps, Project No. 4278.<br>2. Approved a budget appropriation of $39,352 from the Gas Tax Fund and $60,648 from FY 2015-16 CDBG Funds to the Disadvantaged Community ADA Curb Ramps. |
| *13. Ordinance No. 197.13 | Waived the second reading and adopted Ordinance No. 197.13 amending the Milpitas Municipal Code to re-organize the City departments. |
| *14. Ordinance No. 289 | Waived the second reading and adopted Ordinance No. 289 amending the Milpitas Municipal Code to include the contract and settlement authority of City staff. |
| *15. Resolution | Adopted Resolution No. 8484 authorizing purchase of the ADAC S4 system by SyTech Corp. at a cost of $26,739.38 pursuant Municipal Code section on sole source procurement; and, approving maintenance and support agreement with SyTech Corp. in the annual amount of $10,308.00 and for a term from July 1, 2016 to June 30, 2020, subject to City Council appropriation of funds and without further Council action. |
| *16. Resolution | Adopted Resolution No. 8485 approving purchase of a breathing air compressor system from Bauer Compressors for the Fire Department for $64,351.76, via procedures for "piggyback" procurement. |
| *17. Resolution | Adopted Resolution No. 8486 supporting reimbursement to the Milpitas Fire Department of mutual aid costs through the Cal EMA funding process. |
| *18. Agreement with Data Compliance Services | Approved an agreement with Compliance Data Services for Transient Occupancy Tax (TOT) audit services in the total amount of $20,500 for a term from July 1, 2015 to June 30, 2016. |
| *19. Amendment No. 4 with DataProse LLC | Approved Amendment No. 4 extending the agreement with DataProse, LLC to June 30, 2016 for an amount not to exceed $62,500 for utility bill printing and mailing services. |
| *21. Agreement with Assurance Engineering Inc. | Approved an agreement with Quality Assurance Engineering, Inc. doing business as Consolidated Engineering Laboratories, in the amount of $1,000,000, and for a term from July 1, 2015, to June 30, 2020, for construction inspection and materials testing services for various Capital Improvement Program projects. |
| *22. Amendment No. 1 to Agreement with HMH Inc. | Approved Amendment No. 1 to agreement with HMH Inc. for Project No. 4179, increasing the agreement amount by $36,000 and extending the term to June 30, 2016. |
| *23. Agreement with ID Modeling | Approved an agreement with ID Modeling in an amount not to exceed $49,980.00 for a term from June 2, 2015 to July 31, 2016. Approved a budget appropriation of $49,980 from the water fund to CIP No. 7118. |
| *24. Amendment No. 7 to Master Agreement with VTA | 1. Approved Amendment No. 7 to the Master Agreement with the Santa Clara Valley Transportation Authority (VTA) relating to the Silicon Valley Rapid Transit Berryessa (BART) Extension Project (GT-1063) and Montague Widening Project (CIP No. 4179).<br>2. Authorized the payment of $2,825,000 to Santa Clara VTA for City Infrastructure Upgrades after July 1, 2015. |
| *25. Approve Payments | Authorized payments of annual support and maintenance to two vendors: Cayenta for $151,349.62 and Peelle Technologies for $23,144.00. |

**PUBLIC HEARINGS**

| | |
|---|---|
| **1.** Levy Assessments for LLMD No. 95-1 McCarthy Ranch | City Engineer Steven Machida introduced the Landscaping and Lighting Maintenance Assessment District No. 95-1 at McCarthy Ranch. Each year, a public hearing was required to review assessments charged to property owners for public improvements. He displayed photos showing results of the maintenance, installation and repair work in the district. $290,738 was the total amount to be assessed in the next fiscal year. |

Vice Mayor Montano asked for clarification on the contract for services by Jensen Landscaping (agenda item no. 20) and the action required at the public hearing. City Manager Williams explained the annual assessment process at this hearing, while the later matter was the contract with the service provider.

Next, Mayor Esteves opened the public hearing for comments.

Robert Marini, Milpitas resident, asked about parcel numbers on McCarthy Blvd. in that district and who paid the assessments. Mr. Machida explained it was the landowners within the district who paid for the services performed.

Voltaire Montemayor, Milpitas resident, remarked about the levy.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(2) Motion: to adopt Resolution No. 8481 approving the annual Engineer's Report, confirm diagram and assessment, and order levy of assessments for FY 2015-16 for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

| | |
|---|---|
| **3.** Levy Assessments for LLMD No. 98-1 Sinclair Horizon | City Engineer Steven Machida introduced the Landscaping and Lighting Maintenance Assessment District No. 98-1 at Sinclair Horizon subdivision. Each year, a public hearing was required to review assessments charged to property owners for public improvements. He displayed photos showing some of the landscape and maintenance in that neighborhood. $38,053 was the total amount to be assessed in the next fiscal year. |

Mayor Esteves opened the public hearing, and no speakers came forward.

(1) Motion: to close the public hearing after hearing no comments

Motion/Second: Vice Mayor Montano/Councilmember Giordano

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

(2) Motion: to adopt Resolution No. 8482 approving the annual Engineer's Report, confirm diagram and assessment, and order levy of assessments for FY 2015-16 for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon

Motion/Second: Vice Mayor Montano/Councilmember Giordano

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

**3.** Bonds for The Crossings at Montague – TEFRA hearing

Councilmember Barbadillo said he would excuse himself from this matter, due to the location of his business office in proximity to the project on Montague. He left the dais for this item.

Assistant City Manager/Finance Director Emma Karlen explained the need for actions on this bond refinancing matter for The Crossings at Montague project. Bonds were to be issued for Montague Parkway Associates LP by the California Municipal Finance Authority (CMFA), following this public hearing as required by the Tax and Equity Fiscal Responsibility Act (TEFRA)

Vice Mayor Montano remarked about affordable housing in this financing action and the general need for affordable housing due to expensive rents in the area. Her comment followed the explanation that the project would consist of 20% affordable units for sale, and thus eligible for tax-exempt bond financing.

Mayor Esteves opened the public hearing.

Robert Marini, Milpitas resident, commented on the refinancing of the bonds. He asked if no interest was to be paid by the City, which Mrs. Karlen confirmed. He also sought clarity on the definition of affordable housing.

(1) <u>Motion</u>: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(2) <u>Motion</u>: to adopt Resolution No. 8483 approving the issuance of bonds by the California Municipal Finance Authority for the benefit of Montague Parkway LP to provide for financing of The Crossings at Montague project, and that such adoption is solely for the purposes of satisfying the requirements of TEFRA, the Internal Revenue Code and CA Government Code Section 6500 (and following)

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**UNFINISHED BUSINESS**

**4**. Ethics Hotline

Mayor Esteves reported that he became aware of the new "ethics hotline" at the Santa Clara Valley Transportation Authority, on whose Board of Directors he served.

City Manager Williams explained that this topic was brought to Council to seek agreement from Councilmembers to proceed, for any item that would take four hours or longer of staff time. There were at least three vendors that could take such phone calls as required for an ethics hotline, if established. Costs were estimated at $15,000 - $20,000. Reports to such hotline were for people to report any unethical business or labor practices that might occur with City vendors.

Councilmember Grilli supported the idea but had questions about the process, particularly how such calls would be handled. The City Manager mentioned that the hotline company would contact him or the City Attorney or Human Resources about any confidential personnel complaint.

Councilmember Giordano referred to a past Ethics Program that was a disaster in the early 2000s in Milpitas, which she did not want repeat. Once the Councilmember she heard of the VTA's new hotline program, she was interested to learn more. She inquired if there was penalty process.

Mayor Esteves commented that it was really more for vendors that do business with the city. The ethics hotline was not designed for customer service issues or human resources problems.

Motion: to direct the City Manager to conduct research for an ethics hotline and return to City Council with specifics for a Request for Proposals for vendors who could implement an ethics hotline program in Milpitas

Motion/Second: Mayor Esteves/Councilmember Giordano

Vice Mayor Montano asked about whistleblower protections. City Attorney Mike Ogaz responded there were such statutes in state and federal laws to protect those reporting. He could respond in a future update to the Council.

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

**5.** Affordable Housing Policy Options

City Attorney Mike Ogaz discussed options on an affordable housing policy, in advance of the nexus study that City Council had already directed, which would not be completed for approximately nine months (in advance of any permanent policy). He reviewed five options noted in the written report. City Council was requested to provide direction to staff to implement or take no action at this time. Mr. Ogaz suggested the most feasible option at this time could be requiring a Condition of Approval for affordable housing, in advance of the nexus study.

Councilmember Giordano appreciated this topic on the agenda, as requested by the Mayor. She felt it was premature before the nexus study was done. Inclusionary zoning did not necessarily bring affordable housing units to be built in the City.

Vice Mayor Montano agreed with the Mayor's request. There was a crisis over housing going on right now. Inclusionary zoning was what she thought would work best. Including affordable in Conditions of Approval would be helpful.

Councilmember Grilli needed a lot more information before voting on including affordable housing prior to the nexus study. No affordable housing was required in the Transit Area Specific Plan. She wanted the City to have a strong policy that would stand up legally.

Councilmember Barbadillo commended the Planning Commission for recommending a nexus study on affordable housing. The nexus study was needed while there was a whole lot of pending development projects in Milpitas.

Mayor Esteves wanted to clarify that the potential new policy would only apply after this date to new projects that had no application with the City yet. He said maybe just 5% required in a new project, for instance.

Councilmember Grilli asked the Mayor: was this for new projects, and related to which option. The Mayor replied Option 2, with a condition of approval requiring 5% of a new development to be affordable units.

The City Manager talked about the status of a project as complete or deemed incomplete, and projects being amended. Mayor Esteves responded that the last one should not be included in a new affordable housing requirement.

Mayor Esteves asked for comments from the audience.

Robert Marini, Milpitas resident, said the devil was in the details. This was a noble intent by the City Council but there would still be homeless people after this action.

Julie Martinez, homeless resident of Milpitas with her children, asked what the City Council was doing for people here including the homeless. She gave her own personal homeless story and efforts to try to find affordable home or apartment.

Voltaire Montemayor, Milpitas resident, said this was a good one, regarding units for people and houses.

Motion: to request the City Attorney to return to the City Council with a policy for a Condition of Approval in future development projects including what was covered, to specify 5% of units shall be affordable and all of this would be in advance of the nexus study and prior to a formal, permanent policy on affordable housing requirements

Motion/Second: Mayor Esteves/Vice Mayor Montano

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

**REPORT of MAYOR**

**7.** Plastic Bags

City Engineer Steven Machida reported that at the last meeting of the Recycling and Source Reduction Advisory Commission in April, Commissioners discussed state legislation on banning plastic bags. Adopted state legislation was subject to a referendum vote on the upcoming statewide ballot. Commissioners asked for the ban to be considered again by Milpitas City Council, after the past effort failed. Staff needed to know if Council would like to proceed on action to ban plastic bags. Several Councilmembers expressed support while one did not.

Mayor Esteves invited comments from audience.

Robert Marini, Milpitas resident, could go either way on this issue. Businesses may need to charge the customers for the paper bags, and that's too much.

Voltaire Montemayor, Milpitas resident, spoke of non-biodegradable items such as the plastic item. It became trash.

Garry Long, Milpitas resident, asked how far reaching this ban would be.

Mr. Machida replied the ban would be for single use, plastic shopping bags, not the ones used for produce in groceries or the newspaper cover bags for rain protection.

Councilmember Barbadillo left the dais at 9:58 PM.

Motion: to direct staff to return to Council with appropriate actions following a review of the previous Environmental Impact Report completed with San Mateo County, and a possible ordinance to ban single use plastic shopping bags in Milpitas

Motion/Second: Mayor Esteves/Vice Mayor Montano

Motion carried by a vote of: AYES: 3
NOES: 1 (Giordano)
ABSENT: 1 (Barbadillo)

**NEW BUSINESS**

**8.** Water Conservation Program Measure

City Engineer Steve Machida introduced SCVWD Director Richard Santos, who gave brief comments to the City Council on drought issues. He introduced Cary Hillis, District staff lead on the current drought and the District's actions on the drought. Jerry Delapiedra also described actions of the district, including ways to report waster waste around the county and noted its drought hotline number 408-630-2000.

Vice Mayor Montano inquired about the hotline phone and its operation, graywater installation, and outreach on low-flow showerheads to the older homes in communities. Mayor Esteves mentioned that the City had a water waste hotline too. The District's free Water Wise House Call Program was its signature effort during the drought.

Mayor Esteves invited the audience to come to the podium to ask questions.

Robert Marini, Milpitas resident, reported one incident of water waste. The City needed to get serious about expanding units of housing, which was adding to the drought. He asked what an efficient toilet was and for the cost of conversion of turf.

Voltaire Montemayor asked if the cost was too much versus desalination. Mr. Santos responded to him about sources of salt water runoff, before any effort to go to the ocean.

Rob Means, Milpitas resident, installed a "chilipepper" device, to use all the cold water in the hot water pipe. He also installed on-demand water circulation devices.

Garry Long, Milpitas resident, asked about any rebate for lawns, taking out the grass and putting in artificial turf. District staff helped him on these.

Ray Maglalang, Milpitas resident, mentioned desalination in San Diego and asked if the District was considering. Mr. Santos said that was explored, and there was a major cost issue at the moment.

Tom Valore, Milpitas resident, thought there were restrictions on recycled water. He asked if it was good enough to drink. Mr. Santos responded on the possibility of that.

Councilmember Barbadillo asked about the correlation of drought to less water usage and increased water rates for customers. Mr. Santos responded on significant increase in all of the costs to bring wholesale water to residents and businesses, so the District's customers such as City of Milpitas then needed to charge higher rates.

Councilmember Grilli thanked the Water District staff for the presentation. She urged additional outreach to Milpitas school sites and school staff.

Mayor Esteves thanked the gentlemen for their valuable presentation - especially for informing Milpitas homeowners about drought issues and ways to respond to it.

**ORDINANCES**

**11.** Ordinance No. 65.144

Chief Building Official Keyvan Irannejad explained that the proposed ordinance was in response to new state law requirements for updated regulations on permitting new rooftop solar system installation. The number of permits in Milpitas more than doubled in 2013 for solar permitting, with many more in 2014.

Mayor Esteves invited speakers from the audience.

Robert Marini, Milpitas resident, asked what was the rebate for installation of solar panels on a house and what were the kilowatt hours of the energy? Mr. Irannejad provided him with some of those estimated figures.

City Attorney Ogaz read aloud title of Ordinance No. 65.144, "An Ordinance of the City Council of the City of Milpitas adding Chapter 1.5 to Title II of Milpitas Municipal Code Relating to Streamlines Permitting Process for Small Residential Rooftop Solar Systems."

(1) <u>Motion</u>: to waive the first reading beyond the title

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(2) <u>Motion</u>: to introduce Ordinance No. 65.144

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**12.** Ordinance No. 208.51

City Engineer Steven Machida explained the housekeeping item on the City's current sewer municipal code, as regards the regional wastewater treatment facility. The proposed ordinance would bring Milpitas into compliance, following recent action in San Jose.

City Attorney Ogaz read aloud the title of Ordinance No. 208.51, "An Ordinance of the City of Milpitas Amending Section 5.38 of Chapter 2, Article V, Title VIII of the Milpitas Municipal Code Relating to Wastewater Discharge Permits."

(1) <u>Motion</u>: to waive the first reading beyond the title

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(2) <u>Motion</u>: to introduce Ordinance No. 208.51

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**RESOLUTIONS** Three resolutions were adopted on consent calendar.

**AGREEMENTS** Six items were approved on the consent calendar.

**20.** Amendment No. 9 to Agreement with Jensen Landscape Service, Inc.

Vice Mayor Montano had requested this item be removed from consent. Her question was answered at the time of the LLMD public hearing. She knew now that parcel owners paid costs toward this company performing the landscaping in that identified district.

<u>Motion</u>: to approve Amendment No. 9 to extend the agreement with Jensen Landscape Services, Inc for 90 days from August 30, 2015 to November 30, 2015 and increase the agreement by $18,219.75 for a total contract amount of $425,900.75

Motion/Second: Vice Mayor Montano/Councilmember Giordano

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

**ADJOURNMENT** Mayor/Chair Esteves adjourned the City Council meeting at 10:16 PM.

**The foregoing minutes were approved by the Milpitas City Council on June 16, 2015.**

____________________________________

**Mary Lavelle, Milpitas City Clerk**

SS1

# M E M O R A N D U M

***Planning & Neighborhood Services Department***

**To:** **Mayor & City Council**

**Through:** **Tom Williams, City Manager**

**From:** Bill Ekern, Interim Director

**Subject:** **Serra Center Study Session Information**

**Date:** May 21, 2015

A City Council study session will be held prior to the June 2, 2015 meeting at 6:00 PM regarding the Midtown Specific Plan and the Serra Center site. Similar study sessions were held by the Planning Commission on February 25, 2015 and the Economic Development Commission on April 13, 2015. Minutes from those meetings are attached for reference.

## Purpose

The study session purpose is to solicit comments from the City Council regarding redevelopment of the Serra Shopping Center site. Staff will provide the City Council with a review of the Midtown Specific Plan and other applicable land use and economic development policies that comprise the City's adopted vision for redevelopment of the approximately 16-acre site. Staff will also review other regulations and requirements pertinent to reuse of the site. The applicant will provide a brief presentation of their development ideas for the Serra Center site.

## Objectives

The objectives of the study session are to:

1. Familiarize the City Council with applicable land use policies, regulations and requirements as they relate to the 16-acre Serra Center site.
2. Provide an overview of the property owner's vision for the Serra Center.
3. Solicit feedback from the Council.

## Recommendation

There is no recommendation, as no project is currently under formal consideration. Staff recommends the City Council receive the presentation, participate in discussion and provide feedback regarding redevelopment of the Serra Center site.

cc: City Manager
City Clerk
Economic Development Manager

SS2

**Date/Time:** Monday, April 13, 2015 at 6:12 pm

**Where:** Milpitas City Hall, Committee Conference Room

**Attendants:** Vice Mayor Montano, Chair Wettenstein; Vice Chair Ablaza; Commissioners, Brahmbhatt, Holthaus, C. Nguyen (7:29pm), Nunez, Peoples (6:19pm), Tsao (7:06pm); City Manager Tom Williams, Economic Development Manager Edesa Bitbadal, Planner Darryl Boyd, Recording Secretary Rachelle Currie

Excused Absence: Commissioners Ahuja, Bhambhra, C. Nguyen, M. Nguyen

Unexcused Absence: Commissioners Howard, and Wong

# ECONOMIC DEVELOPMENT COMMISSION
# Meeting Minutes

**I. Flag Salute**

Chair Wettenstein called the meeting to order at 6:12pm and led the Pledge of Allegiance.

**II. Roll Call and Approval of Alternates**

Chair Wettenstein called for Roll. Commissioners Ahuja, Bhambhra, Howard, C. Nguyen, M. Nguyen, and Wong were not present.

A motion was made by Vice Chair Ablaza and seconded by Commissioner Nunez to move Item No. III after Item No. IV-A. Motion carried unanimously.

**IV. Public Forum (Please *limit comments to 3 minutes) – No public present***

**V. Approval of Agenda**

Vice Chair Ablaza made the motion and seconded by Commissioner Nunez as submitted.

Motion carried by a vote of:

Ayes: 7
Noes: 0
Absent: Ahuja, Bhambhra, Howard, C. Nguyen, M. Nguyen, Wong
Abstain: 0

**VI. Approval of Minutes – March 9, 2015 Commission minutes**

Commissioner Tsao made a correction on her last month's announcement regarding the Cupertino Chamber event stating that Chair Wettenstein was in attendance.

Motion: to approve the March 9, 2015 Economic Development Commission Minutes as amended.

Motion/Second: Commissioner Brahmbhatt / Vice Chair Ablaza
Motion carried by a vote of:

Ayes: 6
Noes: 0
Absent: Ahuja, Bhambhra, Howard, C. Nguyen, M. Nguyen, Wong
Abstain: Nunez

**VII. New Business**

**A. Serra Center Presentation**

Ms. Bitbadal gave an overview of the study session and said that Planning staff, Darryl Boyd with the City Manager, Tom Williams, and Gary Wong (representing the Serra Center owners) will each give a 15-minutes presentation including Q & A portion. Ms. Bitbadal introduced Mr. Boyd; who then gave a brief self-introduction to the commission stating that he is a planning consultant working for MPG.

Mr. Boyd started his presentation with PowerPoint slides providing the entire commission a background about basic planning information and processes. During presentation, both Vice Mayor and Commissioners asked Mr. Boyd questions about the proposed Serra Center project; MidTown Specific Plan, any ongoing and/or upcoming Calaveras Blvd. project/s; and impact fees as they relate to the proposed project. Both City Manager Williams and Mr. Boyd provided answers to Vice Mayor and Commissioners.

Commissioner Peoples commented that the original MidTown Specific Plan has housing included in it and asked Mr. Boyd the number of housing units in that specific plan. Mr. responded it is correct that housing units are included in MTSP, however his number is not accurate to provide to the Commission. Vice Mayor asked if there's a plan for Calaveras Blvd. be widened for traffic circulation; City Manager Williams responded there are no plans to widen Calaveras Blvd. that he could think of. Commissioner Peoples suggested modifying the off-ramp for consideration. Vice Mayor asked about impact fees if any, Mr. Williams said yes and fees are for the direct improvement of the project. Staff's presentation concluded.

Ms. Bitbadal introduced Jeff Rhoades with Gary Wong representing the project owners. Mr. Rhoades informed the Commission, Mr Henry Kwong also representing the owners is present in the audience then started his presentation with PowerPoint slides. Mr. Rhoades told everyone that the owners have owned the property since 2008 (before the recession) and mentioned that they have no particular bias for land use; they have to work with lease terms which project phasing will be dictated by these terms of building occupants. He mentioned that they could work with EPS since the City is already working with them to which City Manager Williams clarified that EPS only worked for the City relating to the Development Impact Fees. Jeff Rhoades laid out proposed timeline for the project: a) Joint City Council / Economic Development Commission meeting; b) mid-June bring revised plans; and c) mid-July present the EIR.

Vice Chair Ablaza asked what the cash-on-cash return to which Mr. Rhoades replied he thinks 11%. Commissioner Brahmbhatt mentioned confusion about City housing in the project site; Mr. Rhoades replied that vertical mixed use might be possible. City Manager Williams said that tonight's objective is to share and get feedback from the Commission due to the applicant's different vision and that the policy if prohibiting residential at 8% build out but ultimately bring a project best suited for the community. Chair Wettenstein asked if the owners are looking at Santana Row-type of development where commercial are located at the bottom with residential located on top. Mr. Rhoades responded they are looking at what the most viable use at the same time. Architect for the project, Mr. Gary Wong, interjected that they have done a preliminary market study (not full blown) and discovered from the Cal Poly students study, vibrancy of the project site where residential is situated on top, commercial at the bottom instead of vice versa. Mr. Boyd said that the project site has lease terms to consider unlike Santa Row was leveled at once compared to Serra Way that has 11 acres of vacant lot areas.

Mr. Williams mentioned east side of the proposed hotel and Walgreens, if that's a public street it can be envisioned as a stand-alone project that can be put in a better perspective. Commissioner Peoples cited neighbors just south of Abel who he believes need to be informed and talked to about the project. Directly east of this project is the precise plan of MidTown. Do something about the precise plan and the context especially where Foster's Freeze vacant lot next to St. John the Baptist Church. Commissioner Brahmbhatt added that the City does not have any leading start-up companies in town, perhaps this could be an opportunity for Google-type start-up company to consider Milpitas as their headquarters location. Commissioner Brahmbhatt is recommending to consider putting up a project, some start-up, with great proximity to freeway and great housing.

Jeff Rhoades commented that there's a risk associated with attracting a major tech-user here; Commissioner Peoples said proposing office building built on spec is great; Chair Wettenstein added pushing for Class A building, maybe Class B would be easier to fill. Vice Mayor Montano asked to define Class A building. City Manager Williams explained Class A buildings are higher-end with more amenities, materials for the office spaces, very nice buildings, etc. Commissioner Peoples said that we need more professionals, like attorneys, having offices location here in Milpitas.

Commissioner Holthaus said that the City does not have a hospital or university, perhaps we need it to elevate City; it would be nice also like a Milan-type city where fashion is the trade, we need a small trade to be known for City. Mr. Williams remarked about City identity and believes that this project site is the most important site of the City and perhaps identify Milpitas. Vice Mayor commented about nice commercial location because Milpitas folks travel outside Milpitas for upscale shop or Apple store maybe.

More discussion between Commission and Mr. Rhoades ensued about market analysis. City Manager Williams addressed the project representatives stating they need to do an independent market study; what the risk is and the big question is land use (is residential appropriate?). Addressing the commission he asked would this commission recommend residential, if yes, what would that look like knowing the City's policy of 80% build out and needs to be brought to City Council.

Chair Wettenstein noted that he does not see ground floor residential, but envisions ground floor retail, second office, and perhaps residential – mixed use.  Commissioner Peoples remarked it depends on what the neighbors say; they might want to see 2-story or 3-story townhomes.  Think about Abel to make it vibrant and lively.  Commissioner Brahmbhatt does not support residential because the City has way too much residential already and not enough schools.

**III. Announcements**

Vice Mayor Montano has nothing to report.  Chair Wettenstein announced Milpitas Chamber of Commerce once a month breakfast at the Milpitas Senior Center tomorrow, May 14 at 7:30 am.  End of May, Milpitas International BBQ event.  Commissioner Peoples announced TECO grand opening on April 18 at 10am.

Economic Development Manager Bitbadal announced BAAQMD meeting on April 23 at 6:00 pm here in Council Chambers to discuss odor issues.  She will be attending ICSC Annual Alliance in Fremont on April 23 from 7:30 am to 11:30 am and will present 3 ongoing Milpitas projects namely: Pacific Mall (by Torgan Group); District 1 – pitching grocery across Great Mall (by Integral); and Landmark Tower (by Singpoli).  Ms. Bitbadal asked for a volunteer to help out and attend with her; Commissioner Holthaus committed herself to join Ms. Bitbadal.  Reminded Commissioners whose term is coming up to send email to Mayor and City Clerk if they seek re-appointments.  Also, April 25 at 11:30am is the Commissioners' Recognition Luncheon event in Milpitas Community Center.

**VIII. Old Business**

A. Bylaws Subcommittee Report was not discussed.

**IX. Upcoming Events –** No reports

**X. Adjourn –** Commissioner Nunez motioned, and seconded by Vice Chair Ablaza to adjourn the meeting at 8:02 pm.  The motion carried unanimously.

# MEETING MINUTES

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

**Wednesday, February 25, 2015**

**I. PLEDGE OF ALLEGIANCE**

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

**II. ROLL CALL/ SEATING OF ALTERNATE**

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

**Absent:** All commissioners present

**Staff:** Steven McHarris, Johnny Phan, Felix Reliford, Tracy Tam, Adam Petersen

**III. PUBLIC FORUM**

**Chair Mandal** invited members of the audience to address the Commission and there was one speaker who spoke about earthquakes and broken water pipes.

**IV. APPROVAL OF MEETING MINUTES**

**Chair Mandal** called for approval of the February 11, 2015 meeting minutes of the Planning Commission.

**Motion** to approve Planning Commission meeting minutes as submitted.

Motion/Second: Commissioner Sandhu/Vice Chair Ciardella

AYES: 7

NOES: 0

ABSTAIN: 0

**V. ANNOUNCEMENTS**

Planning Director Steven McHarris announced that the Milpitas Vision Plans for California Circle and Main at Serra received the 2015 American Institute of Certified Planners (AICP) National Award for outstanding student project that contributes to advances in the field of planning.

Mr. McHarris said staff has been working with St. Elizabeth Church on their Parish Hall project that the Planning Commission approved last year and there was a condition that the applicant review the possible relocation of the trash enclosure. He said staff has been working with the applicant and is having difficulty finding an ideal location and it is staff's recommendation to have the enclosure remain at its present location. He added that the enclosure will be updated with a solid concrete block wall, and the truck operations will cause less noise for the neighbors at this location.

Chair Mandal said that since upper staff reviewed the request and determined this to be the best location, and since there have been no complaints made, he has no objections to leaving the trash enclosure where it is.

Vice Chair Ciardella reminded everyone that next Friday is the Milpitas Chamber of Commerce Crab Feed. He also reported that he received a presentation through the Chamber about a month ago regarding the Serra Center.

Commissioner Madnawat announced that MUSD and Milpitas Community Educational Endowment (MCEE) will hold the third annual Tech Symposium on Saturday, March 14 from 9:00 am to noon at 1285 Escalon Parkway and all are invited to attend.

Commissioner Mohsin announced that on Saturday, February 28th the Milpitas Democratic Club will host a resident forum in the Milpitas Police Community Room from 2:00-4:00 and all are welcome.

**VI. CONFLICT OF INTEREST**

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

There were no reported conflicts.

**VII. APPROVAL OF AGENDA**

**Chair Mandal** asked if staff or Commissioners had changes to the agenda. Mr. McHarris requested exchanging Public Hearing item number IX-1 with IX-3 so that the Town Center Amendment item could be heard first.

**Motion** to approve the February 25, 2015 agenda with requested change.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

**VIII. CONSENT CALENDAR**

**No Items**

## IX. PUBLIC HEARING

**IX-3** **TOWN CENTER AMENDMENT – ALL TOWN CENTER DESIGNATED PARCELS – GP15-0001; ZA14-0011 and EA15-0001:** A General Plan Amendment, Zoning Text Amendment and Environmental Impact Assessment to the Town Center land use designation and zoning district that would prohibit any new residential uses.

Project Planner Adam Petersen provided a PowerPoint presentation.

Commissioner Sandhu asked why the change is coming now and Mr. Petersen said this is the direction of the City Council. Mr. McHarris provided background information, stating that the last action in the Town Center was to expand the Town Center zoning district south of Calaveras and that action introduced the potential for residential use with no minimum density. This resulted in several single-family residential subdivisions along the south side of Calaveras. Staff reviewed residential uses that would be consistent with the Town Center zone and recommended mixed-use with no ground floor residential to the Planning Commission, whom in turn made the same recommendation to the City Council. The City Council directed staff to remove residential altogether so the item has returned to the Planning Commission for their consideration.

Vice Chair Ciardella asked if commercial can be located on the bottom floor and office space above and Mr. Petersen said he believes this would be allowed.

Commissioner Madnawat asked about dry cleaning not being permitted in the town center and Mr. McHarris said dry-cleaning businesses are permitted however dry cleaning plants where chemical cleaning is done is not permitted in the Town Center.

Chair Mandal opened the public hearing and there were two speakers.
The owner at 500 E Calaveras believes mixed use should be acceptable but ruling out residential is something the commission should think twice about. He believes it should be kept mixed use.

A gentleman referred to pages 7 of the staff report regarding natural disasters and suggested adding "or man caused disaster" to the text. He also commented that higher buildings in the downtown area can be accomplished if one looks at how other cities have done it.

**Motion** to close the public hearing.

Motion/Second: Commissioner Sandhu/Vice Chair Ciardella

AYES: 7

NOES: 0

**Motion** to adopt Resolution No. 15-009 recommending the City Council adopt General Plan Amendment No. GP15-0001, Zoning Amendment No. ZA14-0011, and approving Environmental Impact Assessment EA15-0001 to prohibit all new residential uses from the Town Center Zoning District.

Motion/Second: Commissioner Madnawat/Commissioner Morris

AYES: 6

NOES: 1 Lien

**IX-2** **GENIUS KIDS CUP – 487 & 495 Jacklin Road – UP14-0014**: A request for a Conditional Use Permit to operate a daycare and afterschool tutoring facility with a total of 75 children within an existing commercial building.

Project Planner Tracy Tam provided a PowerPoint presentation reviewing the project.

Chair Mandal asked about the lighting in the play area and Ms. Tam said the applicant has expressed interest in including lighting in that area and Chair Mandal said he feels this is important for the safety of the children. Chair Mandal also asked about the surface of the play area and Ms. Tam said it will be engineered bark which has been compressed to a certain level so that dust is not produced when the children play outdoors.

Vice Chair Ciardella asked about the play equipment and Ms. Tam said that during the review process there was a proposal for play equipment but it is no longer proposed due to staff's concern with the surrounding residential uses. The applicant will be providing art easels and sand boxes.

Rennu Dhillon, Genius Kids franchise owner, was present to discuss the project. Chair Mandal asked her for clarification on the ground material being used in the play area and she said there are different choices available, including engineered wood chips or rubber mulch, and what is allowed in a public park is different that that allowed in a preschool, but added that they do not have a preference as long as it meets Department of Social Services standards.

Chair Mandal asked Ms. Dhillon about the lighting and she said there are some lights in the back of the building but not enough for the playground, so they are open to adding more lighting and feels using solar powered lights would be a good idea.

Commissioner Mohsin asked what time of play equipment will be included if there are no play structures and Ms. Dhillon said they will have picnic tables and the school is focused on science and plans to have a lot of hands on learning and projects outside, including gardening.

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

**Motion** to close the public hearing.

Motion/Second: Commissioner Morris/Commissioner Sandhu

AYES: 7

NOES: 0

**Motion** to adopt Resolution No. 15-011 approving Conditional Use Permit No. UP14-0014 to operate a daycare and an afterschool tutoring facility with a total of 75 children within an existing commercial building located at 487 and 495 Jacklin Road, subject to findings and Conditions of Approval, and an amendment to include a condition that the outdoor play area will have rubberized ground material.

Motion/Second: Commissioner Sandhu/Vice Chair Ciardella

AYES: 7

NOES: 0

**IX-1** **HOUSING ELEMENT, SEISMIC/SAFETY ELEMENT, AND OPEN SPACE/ENVIRONMENTAL CONSERVATION OF THE GENERAL PLAN – EA14-0007 and GP14-0004:** A request for Adoption of a Negative Declaration and a General Plan Amendment Approving the Draft Housing Element 2015-2023, and revisions to the Seismic/Safety Element and Open Space/Environmental Conservation Element of the General Plan.

Principal Planner Felix Reliford provided a PowerPoint presentation.

Commissioner Madnawat asked about fees for affordable housing and there was discussion about the Nexus study and City Council’s decision not to pursue it. Commissioner Madnawat asked how many affordable housing units were provided in Milpitas last year and Mr. Reliford said approximately 65 units. Commissioner Madnawat feels this is an insignificant amount of housing and the City is not creating fees to provide affordable housing which is contradictory to what state law requires. Mr. Reliford said staff is researching incentives, such as density bonuses.

Commissioner Maglalang referenced page six of the Draft Housing Element which states that the City did not meet its RHNA goals for very low to low moderate income households and asked the reason for this. Mr. Reliford said that no city meets 100% of their RHNA number and most cities seldom meet 50%.

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

**Motion** to close the public hearing.

Motion/Second: Commissioner Sandhu/Vice Chair Ciardella

AYES: 7

NOES: 0

Commissioner Morris suggests revisiting the subject of a Nexus study and returning to the City Council.

Commissioner Madnawat feels the City has not achieved any of its affordable housing targets and has only provided 2% affordable housing. He believes the City is required to have some policies to try to achieve these goals and he does not see any policies to support this.

**Motion** to adopt Resolution No. 15-0008 recommending the City Council adopt a Negative Declaration (Environmental Assessment No. EA14-0007) and approve General Plan Amendment No. GP14-0004 relating to the Draft Housing Element 2015-2023 and revisions to the Seismic/Safety Element and Open Space/Environmental Conservation Element of the General Plan with an amendment to return to City Council with a recommendation for a Nexus study for affordable housing and setting aside funding for affordable housing.

Motion/Second: Commissioner Madnawat/Commissioner Morris

AYES: 7

NOES: 0

## X. NEW BUSINESS

### X-1 SERRA CENTER STUDY SESSION

Senior Planner Adam Petersen said the study session would consist of two purposes, a review of City policies and zoning designation for the Serra Center, and a discussion on future development potential of the center, and showed a PowerPoint presentation reviewing the Serra Center.

Chair Mandal feels this is the main entrance into Milpitas and the center currently gives him the wrong impression about the city, and he said this is an opportunity to have an area that is an icon of the city. He asked how much input the Economic Development Commission (EDC) has had on the project thus far.

Mr. McHarris said the EDC has not been agendized as this is the first City commission review of this center. Chair Mandal feels it is important that the EDC review the development of this center and that input is received from them.

Commissioner Maglalang said he prefers one straight building similar to Santana Row with underground parking.

Commissioner Madnawat commented that the Cal Poly students had great plans in their study and he would like to see them incorporated into this project.

Gary Wong said the Serra Center was previously presented to the Planning Commission and City Council but it did not go far due to the recession; however, it is being brought back to reality with his team and the Serra way partners. He said in the past they were given the concept that mixed use was allowed, then they were sidetracked because residential was not allowed in the new General Plan policy, and the design plans they are showing are based on mixed use, which they want to introduce into this project.

Mr. Wong showed a PowerPoint of the proposed project and reviewed their future plans for the site.

Commissioner Madnawat asked about the timeline of the project. Mr. Wong said there are a number of leases that do not end for some time so they are proposing starting development on the east side working toward the west when those leases expire. He said they hope to break ground some time next year and that development will happen in four phases.

The latter part of their presentation was to receive input from the commissioners and below is a summary of comments received from the Planning Commission:

- Take item to Economic Development Commission
- Enhance Economic Support of City
- Obtain ideas from an economic team
- Do not underestimate Milpitas
- Look at Fremont Pacific Commons Center as example
- Provide staff with experience in similar past project examples
- Incorporate Cal Poly vision study
- Work with Cal Poly to further the concept
- Santana Row style activity
- Revisit Floor Area Ratio
- Gateway to the City
- Residential will be above commercial (no ground floor residential)
- Iconic appearance needed
- Affordable commercial and residential rents
- Serra Center theme, historic.
- Look at Alviso Park for history
- Attractive, enjoyable spaces and experience
- Incorporate alternative energy solutions
- Beautify and orient toward adjacent creek channel
- Emphasize pedestrian design
- Design for convertible internal street(s) (can be closed for festivals, events)
- Not in favor of residential along Junipero
- Consider moving parking structure closer to Junipero, no residential
- Work on Serra/Calaveras "pork chop" for gateway design

Serra Center owner Sam Ying thanked the commission for their time and said their goal is to build a place where families can spend time and a center that Milpitas will be proud of.

**XI. ADJOURNMENT** The meeting was adjourned at 11:10 PM to the next meeting scheduled on Wednesday, March 11, 2015.

**Motion** to adjourn to the next meeting.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

*Meeting Minutes submitted by*
*Planning Secretary Elia Escobar*