JOINT MILPITAS CITY COUNCIL AND HOUSING AUTHORITY MEETING AGENDA

TUESDAY, JUNE 16, 2015

455 EAST CALAVERAS BLVD, MILPITAS, CA
5:30 PM HOUSING AUTHORITY
6:00 P.M. (CLOSED SESSION) ● 7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

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

II. HOUSING AUTHORITY COMMISSION

Receive Update Related to Staff Approval of Implementation of Disposition and Development Agreement Terms for the South Main Street Senior Lifestyles Project (Staff Contact: Tom Williams, 408-586-3051)

III. ADJOURN TO CLOSED SESSION (6:00 p.m.)

a) CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION
Pursuant to California Government Code Section 54956.9 - City as Plaintiff

b) CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Pursuant to California Government Code Section 54956.8
Property: McCandless Property APN 086-41-016 and APN 086-41-017
Negotiating with: Milpitas Unified School District
Under Negotiation: Purchase & Sale Agreement

c) CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION
Pursuant to California Government Code Section 54956.9 - City as Defendant

CLOSED SESSION ANNOUNCEMENTS: 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. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. INVOCATION (Mayor Esteves)

VI. APPROVAL OF COUNCIL MEETING MINUTES – May 11 and June 2, 2015 meetings

VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – June and July 2015

VIII. PRESENTATIONS

- Commendation to Agape Mobile Dental Bus at Senior Center
- Presentation of Youth Advisory Commission's Scholarship Award to Charles "David" Olivar
- Proclaim July 2015 as *Parks & Recreation Month*
- Commendations to Milpitas Police Officers and Santa Clara Valley Transportation Authority Bus Driver for the recent safe return of an abducted child

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 place the item on a future meeting agenda.

X. ANNOUNCEMENTS

XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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 HEARING

1. **Conduct a Public Hearing, Adopt a Resolution Approving a Water Conservation Plan, Approve a new Capital Improvement Project Entitled Water Conservation Program Project No. 7126, Approve a Budget Appropriation, Deny Request for Supplemental Water to Golf Courses and Adopt Urgency Ordinance No. 240.3 Adding Supplemental Water Use Restrictions and Penalties Per State Law (Staff Contact: Steven Machida, 408-586-3355)**

XV. UNFINISHED BUSINESS

2. **Direct Staff to Issue a Request for Proposals for Collection and Disposal of Solid Waste, Recyclables and Organics, and Approve Amendment No. 1 to the Consultant Agreement with HF&H Consultants for Solid Waste Procurement Services in the Amount of $49,925 for CIP No. 3401 (Staff Contact: Steven Machida, 408-586-3355)**

3. **Receive a Report from Engineering Staff Regarding Residential Water and Sewer Rate Clarifications (Staff Contact: Steven Machida, 408-586-3355)**

XVI. REPORTS OF MAYOR AND COMMISSIONS

* 4. **Consider Mayor's Recommendations for Re-appointments to City of Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

5. **Hear Report from the City Council's City Attorney Subcommittee (Contact: Council-member Giordano, 408-586-3032)**

* 6. **Approve the 2016 Work Plan of the Community Advisory Commission (Staff Contact: Tim Wong, 408-586-3286)**

* 7. **Authorize and Approve Changes to the By-Laws of the Emergency Preparedness Commission (Staff Contact: Sean Simonson, 408-586-2810)**

XVII. NEW BUSINESS

8. **Receive Report on Status of Ballot Measures T and Z, Relating to Urban Growth Boundaries and Urban Service Areas and Provide Direction to Staff (Staff Contact: Bill Ekern, 408-586-3273)**

9. Receive Quarterly Economic Development Report (Staff Contact: Edesa Bitbadal, 408-586-3052)

*** 10. Consider Request from Alliance Renewal Kingdom Ministries for a $500 Donation Toward ARK SAM Camp held August 3–7, 2015 (Staff Contact: Mary Lavelle, 408-586-3001)**

*** 11. Consider Request from South Bay Kids Music Group to Waive Fees of $1,480 for "We've Got the Music" Fundraising Event on July 11, 2015 (Staff Contact: Mary Lavelle, 408-586-3001)**

XVIII. ORDINANCES

*** 12. Waive the Second Reading and Adopt Ordinance No. 65.144 Regarding Solar Permit Streamlining Per State Law (Staff Contact: Keyvan Irannejad, 408-586-3244)**

*** 13. Waive the Second Reading and Adopt Ordinance No. 208.51 to Amend the Milpitas Sanitary Code (Staff Contact: Steven Machida, 408-586-3355)**

XIX. RESOLUTIONS

*** 14. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for McCarthy Blvd. Lighting & Landscape Improvements Phase 1, Project No. 3402, and Granting Authorization to the Director of Engineering to Issue the Notice of Final Acceptance after the One-Year Warranty Period and to Release the Performance Bond (Staff Contact: Steve Erickson, 408-586-3301)**

*** 15. Adopt a Resolution Approving Plans and Specifications, Awarding a Contract to Preston Pipelines for Automated Water Meter Replacement (Phase 1), Project No. 7121, and Authorize Director of Engineering to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

*** 16. Adopt a Resolution to Release Unclaimed Checks (Staff Contact: Gabrielle Tsang, 408-586-3131)**

*** 17. Adopt a Resolution Approving Condition of Approval Language Requiring New Residential Development Projects be Subject to a Future Affordable Housing Ordinance (Staff Contact: Michael Ogaz, 408-586-3040)**

XX. AGREEMENTS & BIDS

*** 18. Approve Amendment No. 5 to the Master Agreement with County of Santa Clara for the Senior Nutrition Program (Staff Contact: Stephanie Douglas, 408-586-3226)**

*** 19. Authorize Renewal of Agreement for Excess Workers' Compensation Insurance Contracted via Brown & Brown of California and Authorize Payment (Staff Contact: Emma Karlen, 408-586-3145)**

*** 20. Authorize the Purchase of LED Retrofit Street Light Fixtures for a Total Amount of $206,625 from HD Supply Power Solutions (Staff Contact: Chris Schroeder, 408-586-3161)**

*** 21. Approve Agreements with Nine Vendors for FY 2015-16 Recreation Services Programs (Staff Contact: Dale Flunoy, 408-586-3228)**

*** 22. Approve a Non-Exclusive Collection, Transportation and Recycling of Non-Putrescible Debris Agreement with Recology South Bay (Staff Contact: Steven Machida, 408-586-3355)**

*** 23. Reject the Apparent Low Bid from OnPoint Construction, Authorize Staff to Repackage and Re-advertise 2014 Soundwall Renovation Project No. 4267 (Staff Contact: Steve Erickson, 408-586-3301)**

*** 24. Approve Two Consultant Agreements and Amendment No. 2 to an Agreement with RMC Water and Environment for Engineering Services Related to Recycled Water Pipeline Extensions, Conversion of Augustine Park and Community Garden to Recycled Water, and Backfill Staff Support Totaling $551,351, and Approve a Budget Appropriation for CIPs No. 7118 and No. 7126 (Staff Contact: Steven Machida, 408-586-3355)**

*** 25. Approve a Consultant Agreement with Water Solutions, Inc. for Engineering Services in the Amount of $427,000, Approve a New Capital Improvement Project Supervisory Control and Data Acquisition (SCADA), Project No. 7127, and Approve a Budget Appropriation of $50,000 (Staff Contact: Steven Machida, 408-586-3355)**

*** 26. Approve Consultant Agreement with HydroScience Engineers, Inc for Engineering Services in the Amount of $51,000 for CIP No. 7126 (Staff Contact: Steven Machida, 408-586-3355)**

*** 27. Approve Amendment No. 1 to the Agreement with Biggs Cardosa Associates, Inc. for the Midtown Parking Garage Fire Door Conversion, Project No. 3407 (Staff Contact: Steve Erickson, 408-586-3301)**

*** 28. Approve Pre-Qualified Bidders List, Project Plans and Specifications, and Authorize Advertisement for Bid Proposals from Pre-Qualified Bidders, for Milpitas Sports Center Pool Repair, Project No. 3408 (Staff Contact: Steve Erickson, 408-586-3301)**

*** 29. Authorize the City Manager to Execute an Agreement with the Silicon Valley Regional Interoperability Authority (Staff Contact: Armando Corpuz, 408-586-2534)**

XXI. ADJOURNMENT

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 and 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 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.

II. HOUSING AUTHORITY COMMISSION

Receive Update Report on South Main Street Senior Lifestyles Project (Staff Contact: Tom Williams, 408-586-3050)

Background: The approved Disposition and Development Agreement ("DDA") governs the disposition of a 5.94 acre site from the Milpitas Housing Authority ("MHA") to South Main Senior Lifestyles (SMSL) and the development of a 389-unit senior rental continuum-of-care retirement community on the site, including 199 senior congregate care and assisted living units with services (Phase 1 Development) and 190 independent living senior units (Phase 2 Development) with a total of 48 very low income units (12%). The Housing Authority approved the DDA on November 19, 2013 allowing Phase 1 of the project to move forward for entitlement consideration. The City Council approved the Vesting Minor Tentative Map (No. TP14-0001), Site Development Permit (No. SD14-0006) and Density Bonus (No. DB14-0001) for the Phase 1 project on November 18, 2014.

The property is located on the east side of South Main Street with an address of 1504–1620 South Main Street, identified as Assessor Parcel Numbers 086-22-027, -028, -047 and -048. The property lies within the Midtown Specific Plan Area with Multi-family Residential, Very High Density General Plan Designation. Zoning for the property is Multi-family Residential, Very High Density (R4) in the TOD Overlay (TOD). The project is consistent with the adopted zoning and General Plan designations. It should be noted that the project was in the Redevelopment Project Area and subject to the dissolution of redevelopment State law criteria. As such, if the project is not built out as approved for senior housing with the low-income housing component, then the property is subject to a "clawback" by the Oversight Board and state Department of Finance. This scenario would result in the City paying these agencies for the property with an order to sell the land at its highest and best use with the proceeds distributed to other taxing entities. The City could possibly lose between $12 million to $18 million if the project is not built per the state.

SMSL has entered into a Letter of Intent with an institutional equity investor – The Wolff Company via its Wolff Real Estate Partners II, LP investment fund (Wolff), a major multifamily and senior housing investor and developer headquartered in Scottsdale, Arizona. Wolff will provide over $23 million in equity funding for the project. This includes the estimated $2 million in remaining pre-development costs and approximately $21 million of equity required to construct, market, lease up and manage the stabilized operations of the Phase 1 project. SMSL selected Integral Senior Living LLC (ISL), a major senior housing operator, as Phase 1's operator. ISL will advise on the final detailed design and provide marketing, leasing and staff to manage and operate the facility. Construction is anticipated to commence summer of 2016.

The adopted DDA contemplated the actions proposed and further allows for administrative approval of the requested extension of time as well as the transfer of the DDA majority interest to a third party partner of SMSL. The approved DDA anticipated the need for a possible time extension and the need to transfer the DDA interest to an equity partner and operator of the congregate care and assisted living complex.

The DDA allows for staff level approval of the SMSL request outlined below. Concurrent with these approvals, staff deemed it appropriate to update the City Council/Housing Authority on the project status and introduce the actual partners who will finance and operate the project. Specifically, SMSL is requesting implementation of the DDA terms as follows:

1. An extension of the DDA Closing Deadline for the Phase 1 Development from November 19, 2015 to June 30, 2017;

2. A commensurate extension of the DDA Commencement of Construction Due Date for the Phase 1 Development from December 19, 2015 to July 31, 2017;

3. A commensurate extension of the DDA Completion of Construction Due date for the Phase 1 Development from December 19, 2017 to July 31, 2019;

4. A commensurate extension of the DDA Commencement of Construction Due Date for the Phase 2 Development from December 19, 2019 to June 30, 2021;

5. A commensurate extension of the DDA Completion of Construction Due Date for the Phase 2 Development from December 19, 2021 to June 30, 2023;

6. A transfer of SMSL's interest in Phase 1 Parcel and Phase 1 Development under the DDA to a Joint Venture Entity between SMSL and The Wolff Company (or its affiliate), whose managing general partner will be The Wolff Company (or its affiliate), for the purpose of creating an ownership structure to obtain equity for development of the Phase 1 Development;

7. A transfer of SMSL's interest in Phase 2 Parcel and Phase 2 Development under the DDA to a joint venture entity between SMSL and The Wolff Company (or its affiliate), whose managing general partner will be The Wolff Company (or its affiliate), for the purpose of creating an ownership structure to obtain equity for development of the Phase 2 Development; and

8. Integral Senior Living (ISL) as the operator of Phase 1 Development.

Included in the agenda packet are: a memorandum regarding South Main Senior Lifestyles Project, a fact sheet from The Wolff Company, and an Integral Senior Living company profile.

Fiscal Impact: None.

Recommendation: Receive the update on the project, and comment on the administrative decision to implement the Disposition and Development Agreement allowing for extension of time and transfer of majority interest per the Agreement to The Wolff Company and Integral Senior Living as the operator for Phase I of South Main Senior Lifestyles.

XIV. PUBLIC HEARING

1. Conduct a Public Hearing, Adopt a Resolution Approving a Water Conservation Plan, Approve a new Capital Improvement Project Entitled Water Conservation Program Project No. 7126, Approve a Budget Appropriation, Deny Request for Supplemental Water to Golf Courses and Adopt Urgency Ordinance No. 240.3 Adding Supplemental Water Use Restrictions and Penalties Per State Law (Staff Contact: Steven Machida, 408-586-3355)

Background: The State of California is experiencing a severe multiple year water drought. On April 1, 2015, the Governor issued a Proclamation declaring a Continued State of Emergency due to severe drought conditions and requiring a statewide 25% reduction. The State Water Resources Control Board (SWRCB) has assigned a tentative specific conservation goal of 12% to Milpitas and adopted severe penalties for cities that fail to meet the conservation goal. Water retailers such as Milpitas, are also subject to severe penalties if they fail to perform mandated tasks, such as adopting conservation measures, responding to water waste complaints, and reporting.

The Santa Clara Valley Water District (SCVWD) is experiencing a severe water supply shortage. SCVWD Directors requested a water conservation target of 30% and implemented a penalty of 10 % for water used above contract amounts. San Francisco Public Utilities Commission

(SFPUC) requested a water conservation target of 10%. Last year, the City Council called for a 20% reduction in water use and the community achieved an average reduction of 9.4% in 2014, compared to 2013. Therefore, staff recommends a public outreach goal of reducing water use by **30**% to achieve our required reductions by the various agencies (SWRCB, SCVWD and SFPUC) listed above.

The SWRCB also adopted Resolutions No. 2015-0013 and No. 2015-0032 for Emergency Regulations for Statewide Urban Water Conservation and recently developed additional regulations for conservation and enforcement of conservation. The State recognizes that outdoor water use is discretionary and must be significantly reduced. The mandates require water retailers, such as the City of Milpitas, to implement their Water Shortage Contingency Plan and submit monthly reporting. Water retailers are required to educate customers and reduce water consumption. The City's Water Shortage Contingency Plan is included in the 2010 Urban Water Management Plan and was adopted by Council on June 7, 2011. The City moved from Stage 0 to Stage 2 on August 19, 2014. At this time, Staff recommends remaining at Stage 2. A memo comparing conservation efforts by other cities' is included in the Council packet.

Water Conservation Program: Implementation of a Water Conservation Plan (Plan) is recommended to achieve the goal of 30% consumption reduction and maintain compliance with State law. The proposed Plan includes several activities as described below.

#	Description	Estimated annual City cost	Water saved per year (in HCF, 748 gallons = 1 HCF)	Timeline to start
1	Add two technicians to respond to water waste complaints (response is State-mandated)	$110,000	NA	1 month
2	Computer programming for State-mandated reports and revised billing	$100,000 utility billing $50,000 work order reporting	NA	2 months
3	Conservation Plan staff support	$270,000	200,000 to 800,000 (10 to 30% range depending on plan selected)	1- 3 months
4	Convert City irrigation sites adjacent to the recycled water pipeline	$200,000 (approx 10 sites	12,000	3-6 months
5	Outreach	$30,000		1-2 months
6	Install 4 new recycled water fill stations	$40,000		1-2 months
	TOTAL	$800,000		

The total cost of the proposed water conservation program is estimated at $800,000 for the first year. A new Capital Improvement Program project - CIP No. 7126 titled Water Conservation Program – is recommended for tracking the costs. Budget appropriations of $600,000 from the Water Fund and $200,000 from the Park Fund are required to provide the needed funds.

Hillside Golf Courses: Two hillside golf courses in the Milpitas foothills received water supply termination notices from SCVWD. The golf courses appealed the SCVWD decision and are receiving smaller temporary allocations, contingent upon their continuing effort to work with the City and SCVWD to implement a permanent recycled water supply. The golf courses have submitted written requests to Milpitas for temporary emergency water supply (copies are included in the Council packet). Trucking of recycled water has been presented to the golf courses as another option, and was found to be expensive and infeasible due to the needed

volume of water. Groundwater well capacity in the hillside is limited and provides only a portion of the needed irrigation supply. The golf courses have implemented an efficient irrigation usage plan. A green belt in the Milpitas hillsides provides a buffer against wildfires. Unfortunately, the state's recent drought program mandates water use reduction in the City of Milpitas and fines are significant. As Milpitas must implement a program to meet the required reduction, there is insufficient water supply for the golf courses. At this time, the recommendation is to deny the requests from the golf courses for temporary emergency water supply. The City of Milpitas staff informed the golf courses of the recommendation for denial. However, staff is pursuing the extension of recycled water to the golf courses in conjunction with Spring Valley Summit Pointe.

Rationing Program: A rationing program is necessary to achieve a greater reduction in water consumption. Staff evaluated the various rationing programs listed in the Water Shortage Contingency Plan and recommends a hybrid approach. The existing residential rate structure has been effective, with residential accounts achieving a reduction of 7% overall (30% in the top tier). Consumption in the higher tiers represents outdoor usage, which must be reduced. A penalty equivalent to 10% of the fourth tier unit rate would be assessed on all usage in the fourth tier in addition to the regular unit rate. If the residential customer has zero usage in the fourth tier, then no penalty would be assessed. Residential customers who previously adopted conservation habits are not penalized. Commercial, industrial, and institutional indoor accounts would be assigned an allotment equal to 90% of their corresponding 2013 billing period usage. Usage equivalent to and below the allotment would be charged the regular unit rate. Usage above the allotment would be charged both the regular unit rate and a penalty equivalent to 10% of the regular unit rate. Irrigation accounts would be assigned an allotment of 50% of their corresponding 2013 billing period usage. Usage equivalent to or less than the allotment would be charged the regular unit rate. Usage above the allotment would be charged at both the regular unit rate and a penalty equivalent to 10% of the regular unit rate. Since most non-residential customers have separate irrigation accounts, this method achieves the State goal of reducing outdoor usage with minimal impact to businesses, jobs, and the overall economy. Recycled water accounts are exempt from the rationing program. The Director of Engineering would establish allotments for sites without 2013 consumption history based upon similar uses. There is no appeal process planned.

Conservation measures: On August 19, 2014, the City Council adopted Emergency Ordinance No. 240.2 to address the requirements at that time. They included these measures:

- Eliminates use of potable water for cleaning of any hard surfaces, such as sidewalks, streets, buildings, and parking lots
- Eliminates use of potable water for construction purposes such as dust control and compaction
- Eliminates construction of new swimming pools or ponds or initial filling of any swimming pool or pond (refilling due to evaporation or repairs is acceptable)
- Eliminates use of potable water for cleaning, filling, or maintaining levels in decorative fountains
- Eliminates use of potable irrigation of golf courses except greens and tees area
- Eliminates unlimited use of potable water for irrigation and reduces irrigation to 2 days per week, between 8 am to 8 pm, adjusted for Daylight Savings
- Defers installation of new landscape unless served by recycled water

New state regulations were reviewed by City staff and the City Attorney prepared Urgency Ordinance No. 240.3 amending Chapter 6 of Title VIII of the Milpitas Municipal Code (Water Conservation Ordinance) to implement the following additional potable water use restrictions and/or modifications to existing restrictions:

- Prohibit the application of (potable water) to outdoor landscapes during and within 48 hours after measurable rainfall.
- To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall

prominently display notice of this option in each guestroom using clear and easily understood language.

- Newly constructed homes and buildings must be designed with drip or microspray irrigation systems. (And no new planting shall be installed during the declared drought as stated in VIII-5-5.07 even if the project was approved prior to adoption of this ordinance).
- Prohibit the application of (potable water) to street medians containing ornamental turf.
- Eliminates hydrant flushing, except for health and safety reasons.
- Prohibits use of (potable water) for watering or irrigation of any plants, lawn, grass, landscaping or turf areas between hours of 8:00 pm and 8:00 am, adjusted for Daylight Saving hours and for no more than two days during any seven day period. Watering days shall be:

  Odd address - Monday and Thursday
  Even address - Tuesday and Friday
  No address - Monday and Thursday

Short periods intended for timer adjustment and repair of irrigation system are exceptions to time/day restriction.

In addition, City Council authorized the City Manager or designee to approve a variation of the time/day schedule as submitted by the customers that satisfies the required declared reduction.

- Require the use of spa and pool covers (when not in use to prevent evaporation loss).
- Exceptions to the prohibitions enumerated may be granted in the discretion of the City Council.
- Non-compliance with water use restrictions of Title VIII, Chapter 6 is subject to Title I-1-14.09, Penalty Provisions and/or V-500-08, Administrative Citation.

A key revision is the requirement that irrigation shall take place during daylight hours. The purpose is to enable easy confirmation of watering on incorrect days. This requirement is being adopted by most of the water retailers in the South Bay and regional outreach will be performed.

The potable water prohibitions are not applicable to fountains and irrigation systems that use non-potable water such as recycled water landscaped areas. If recycled water is not available, potable water prohibitions are not applicable to landscape areas and green roofs that are required pollution treatment measures as defined in Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit No CAS612008, C.3 Provision.

The urgency ordinance requires a vote of 4/5 to be adopted and becomes effective upon adoption. A copy of the SWRCB resolutions and proposed ordinance are included in the Council packet. A public hearing notice was published in the local newspaper.

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

Alternative: Failure to adopt these additional conservation measures may result in higher water consumption by the community and/or non-compliance of the mandated conservation levels could result in the state imposing financial penalties up to $10,000 per day on the City.

Fiscal Impact: Budget appropriations of $600,000 and $200,000 are required form the Water Fund and Park Fund, respectively, into the proposed CIP No. 7126 titled Water Conservation Program.

Attachments:

A. Resolution approving Citywide Water Conservation Plan
B. Urgency Ordinance No. 240.3
C. CIP No. 7126, water conservation program sheet
D. Memorandum on water rationing program comparison
E. Water Resources Control Board Resolution 2015-0013

F. Water Resources Control Board Resolution 2015-0032
G. Letters from Summitpointe and Spring Valley Golf Courses
H. Budget Change Form

Recommendations:
1. Open the public hearing to receive comments.
2. Move to close the public hearing following all speakers.
3. Adopt a Resolution to (i) approve a Water Conservation Program, (ii) approve a new capital improvement program project No. 7126 titled Water Conservation Program; (iii) approve budget appropriations of $600,000 from the Water Fund and $200,000 from the Park Funds, and (iv) deny request from two Milpitas golf courses for temporary emergency water supply.
4. Following the City Attorney's reading of the title, move to waive the reading of Urgency Ordinance No. 240.3.
5. Adopt by at least four-fifths (4/5) vote Urgency Ordinance No. 240.3 adding Supplemental Water Use Restrictions Provisions and Penalties as required by state law to Chapter 6 of Title VIII of the Milpitas Municipal Code to be effective immediately.

XV. UNFINISHED BUSINESS

2. Direct Staff to Issue a Request for Proposals for Collection and Disposal of Solid Waste, Recyclables and Organics, and Approve Amendment No. 1 to the Consultant Agreement with HF&H Consultants for Solid Waste Procurement Services in the Amount of $49,925 for CIP No. 3401 (Staff Contact: Steven Machida, 408-586-3355)

Background: On December 2, 2014, the City entered into an agreement with HF&H Consultants (HF&H) for $55,525 for long-term planning of future solid waste services since the City's current contract with Republic Services expires in 2017. The consultant agreement expires in December 2019. On May 5, 2015, staff received Council direction regarding the policies governing and the content of the solid waste services Request for Proposal (RFP). Since then, staff and HF&H met with the Chamber of Commerce and members of the community to solicit input. The key goals include: provide a transparent and competitive process, maintain affordable and convenient services, and provide new and enhanced diversion programs as necessary to meet State mandates. The RFP identifies requirements and details enabling Proposers to develop costs to provide Base and Alternative Services. The RFP is 95% complete and is anticipated to be ready for issuance by the end of June.

It is now necessary to amend the consultant agreement to include the next phases of work. This effort involves developing a list of proposers, issuing the RFP, posting the RFP to a dedicated website, responding to proposer questions, and receiving and reviewing proposals. HF&H proposes to perform this work for a not-to-exceed amount of $49,925, which staff finds reasonable. This increases the total amount under the agreement to a not-to-exceed amount of $105,450.

California Environmental Quality Act: These actions are exempt from CEQA as there will be no physical change to the environment.

Alternative: Delay of direction and amendment approval negatively impacts the schedule to put in place the City's solid waste contract.

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

Recommendations:
1. Direct staff to issue a Request for Proposals for collection and disposal of solid waste, recyclables, and organics.
2. Approve Amendment No. 1 to the consultant agreement with HF&H Consultants for solid waste procurement services for $49,925 for CIP No. 3401.

3. **Receive a Report from Engineering Staff Regarding Residential Water and Sewer Rate Clarifications (Staff Contact: Steven Machida, 408-586-3355)**

Background: On May 19, the City Council held a public hearing and introduced Water and Sewer Rate Ordinances No. 120.47 and No. 208.50 adjusting water and sewer rates. The Proposition 218 Rate Notice was subsequently mailed and the protest hearing and ordinance adoption are scheduled for the City Council to vote on August 4, 2015. Questions were raised by residents at the May 19 and June 2 Council meetings regarding the proposed residential water and sewer rates. This report provides clarification regarding the residential rates.

Water Rate Clarification:

Question W1: Do single family and multi-family customers pay a different rate for water?

Answer W1: Not really. The water rate has two parts, a fixed charge based upon the size of the water meter, and a quantity charge based upon the volume of water used. Multi-family customers typically have larger meters (to match the larger demand of several households simultaneously) and therefore pay a larger fixed fee. However, the fixed fee per dwelling unit is often less than the fixed fee for a smaller single family meter because the cost is shared over more dwelling units. All residential customers are charged the same tiered rates for water volume per dwelling unit (DU). The table below compares both the total cost and cost per dwelling unit for a single family dwelling with an 80 dwelling multi-family account with low water consumption (8 hundred cubic feet (hcf) per dwelling unit), average water consumption (17 hcf per dwelling unit), and high water consumption (44 hcf per dwelling unit). As shown in the table below, the single-family household pays a fixed charge of $27.91 every two months for their water meter. Since the eighty multi-family apartments in this example share a meter, they pay a fixed charge of $2.32 per household every two months for their water meter. The $25.59 savings ($27.91 - $2.32) is apparent in the cost per dwelling unit comparison shown (below).

Low Water Use

Type (# dwelling units)	Volume used hcf	Volume and Cost by Tier	Meter cost (size)	Total cost	Cost per dwelling unit
Single (1 du)	8	Tier 1 8 x $3.62 = $28.96 Tier 2 0 Tier 3 0 Tier 4 0	$27.91 per DU (5/8 inch)	$56.87	$56.87
Multi (80 du)	640	Tier 1 640 x $3.62 = $2,316.80 Tier 2 0 Tier 3 0 Tier 4 0	$185.59 (3 inch) $2.32 per DU	$2,502.39	$31.28

Average Water Use

Type (# dwelling units)	Volume used hcf	Volume and Cost by Tier	Meter cost (size)	Total cost	Cost per dwelling unit
Single (1 du)	17	Tier 1 10 x $3.62 = $36.20 Tier 2 7 x $4.60 = $32.20 Tier 3 0 Tier 4 0	$27.91 per DU (5/8 inch)	$96.31	$96.31
Multi (80 du)	1360	Tier 1 800 x $3.62 = $2,896.00 Tier 2 560 x $4.60 = $2,576.00 Tier 3 0 Tier 4 0	$185.59 (3 inch) $2.32 per DU	$5,657.59	$70.72

High Water Use

Type (# dwelling units)	Volume used hcf	Volume and Cost by Tier	Meter cost (size)	Total cost	Cost per dwelling unit
Single (1 du)	44	Tier 1 10 x $3.62 = $36.20 Tier 2 10 x $4.60 = $46.00 Tier 3 10 x $6.47 = $64.70 Tier 4 14 x $7.30 = $ 102.20	$27.91 per DU (5/8 inch)	$277.01	$277.01
Multi (80 du)	3,520	Tier 1 800 x $3.62 = $2,896.00 Tier 2 800 x $4.60 = $3,680.00 Tier 3 800 x $6.47 = $5,176.00 Tier 4 1,120 x $7.30 = $8,176.00	$185.59 (3 inch) $2.32 per DU	$20,113.59	$251.42

<u>Sewer Rate Clarifications</u>:

Question S1: Is our sewer rate model outdated?

Answer S1: No, our rate model is not outdated. We follow current State requirements regarding our cost allocation model. Our 1975 residential flow estimates were updated with the 2014 Residential Flow Study (see Question S3b below) and are reflected in our proposed FY 2015-16 rate structure.

Question S2: What is the basis for calculating the rates?

Answer S2: Four treatment parameters consisting of flow, biochemical oxygen demand (BOD), suspended solids (SS), and ammonia (NH3) are calculated for each of the 27 customer classes (such as restaurants, office buildings, electronic manufacturers). Capital and operating costs are applied to each of the parameters. The total cost is divided by the four parameter units to get the unit rate.

For example, let's look at a simplified equation for restaurants to understand how the costs are allocated. Each other type of customers has a similar equation.

Total sewage cost for all restaurants in the City	=	Total Sewage Flow from Restaurants	x	Cost to Convey, Treat, and Dispose of Sewage	+	Total Amount of Suspended Solids (e.g. toilet paper and food scraps) in Restaurant Sewage	x	Cost to Convey, Treat, and Dispose of Suspended Solids	+	Same Calculations for BOD and NH3 …

This total cost is then divided by the total flow to calculate the unit rate for each unit of sewage flow from restaurants.

Question S3: How is the flow parameter determined for each customer class?

Answer S3a Non-Residential: We use water billing records for the non-residential customers to determine flow. For most non-residential customers, the sewer discharge is equivalent to the water demand. This assumption is not true for customers who use water in their products, such as concrete manufacturing and food processing. These customers are eligible for the City's Sewer Flow Adjustment Program and a reduction factor is applied to their flow.

Answer S3b Residential: Since it is not possible to monitor the sewage flow from each residence, there are several generally accepted methods to estimate the flow. The partner agencies of the regional wastewater treatment plant estimate flow based upon an assumed average population per household and assumed flow per person. The City of San Jose recently completed a residential flow study that updated population per dwelling unit and per capita discharge from 1975 data. The flow study recommendation is shown in the table below:

	1975 Flow Estimates			2014 Flow Estimates		
	No. of persons	Flow per person gallons per day (gpd)	People x flow per person = gpd per household	No. of persons	Flow per person gpd	People x flow per person = gpd per household
Single family	3.37	65	219	3.54	51	181
Multi-family	2.05	60	123	2.73	51	139
Mobile homes	1.90	65	124	2.24	63	141

The result is a reallocation of costs between all customer categories. Rates for most commercial and industrial customers decrease and the mobile home sewer rate increases at a faster rate than the single family or multi-family customers. The Residential Flow Study states that the water consumption data for Milpitas mobile home parks is inconsistent and was therefore disregarded. A weighted average of the San Jose and West Valley data is used for Milpitas. This data is used to determine the Milpitas share of costs at the regional wastewater treatment facility.

Staff investigated the mobile home park water consumption and agrees that the data is inconsistent. The water meters at the three mobile home parks are past their useful life and are scheduled to be replaced. Staff is having difficulty in collecting mobile home water consumption from neighboring agencies to use in determining a reasonable range for use in the interim until actual data is available. Mobile home usage ranges from 83 gallons per day (GPD) per household to 157 GPD per household for six Bay Area communities. In parallel, staff is evaluating a quote to perform sewer flow metering to evaluate mobile home discharge, although flow metering will be delayed until VTA-BART construction is completed on Dixon Landing. For the purpose of this single year rate analysis, staff recommends using 2.24 persons per household from the San Jose Study and 51 gallons per day per capita (gpdpc) (instead of 63 gpdpca) to set the mobile home park sewer rate. The 51 gpdpc is equivalent to the Milpitas single and multi-family values and is more closely aligned with the lower water use per capita that is seen in Milpitas mobile home parks. The more accurate data from the new water meters and sewer flow monitoring will be incorporated into future rate analyses.

The data shown in the table below was used to calculate the FY 2015-16 sewer rates.

	No. of persons	Flow per person gallons per day (gpd)	People x flow per person = gpd per household
Single family	3.54	51	181
Multi-family	2.73	51	139
Mobile homes	2.24	51	114

Question S4: Why are single family sewer rates higher than multi-family sewer rates?

Answer S4: The difference between single family and multi-family rates is the number of people per household as shown in the table in Answer S3b.

Question S5: How are the BOD, SS, and NH3 parameters calculated for each class?

Answer S5: For most customer classes, these parameters are assigned by the City of San Jose based upon industry standards and State-accepted values. For example, sewage waste from residential customers contains more suspended solids than sewage waste from office buildings.

Unique customers, such as semiconductor manufacturers, are sampled by the City of San Jose to verify their parameters.

Recommendation: Receive a report from Engineering staff in order to clarify rate calculations for water and sewer rates charged to City of Milpitas customers.

XVI. REPORTS OF MAYOR AND COMMISSIONS

*** 4. Consider Mayor's Recommendations for Re-appointments to City of Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the following:

Emergency Preparedness Commission:
1. Re-appoint Mike Berryhill as a regular voting member to a term that will expire in June 2018.
2. Re-appoint Evelyn Chua as a regular voting member to a term that will expire in June 2018.
3. Re-appoint Nasir Lalani as a regular voting member to a term that will expire in June 2018.
4. Re-appoint Jonathan Nakapalau as Alternate No. 1 to a term that will expire in June 2017.
5. Re-appoint Christine Tran as Alternate No. 2 to a term that will expire in June 2017.

Library Advisory Commission:
1. Re-appoint Marie Pham as a regular voting member to a term that will expire in June 2017.
2. Re-appoint Nonie McDonald as Alternate No. 2 to a term that will expire in June 2017.

Parks, Recreation and Cultural Resources Commission:
1. Re-appoint Steve Munzel as a regular voting member to a term that will expire in June 2018.
2. Re-appoint Rohit Sharma as a regular voting member to a term that will expire in June 2018.

Recommendation: Receive Mayor's recommendations and move to re-appoint current members on three City of Milpitas Commissions.

5. Hear Report from the City Council's City Attorney Subcommittee (Contact: Council member Giordano, 408-586-3032)

Background: The City Attorney Subcommittee, chaired by Councilmember Giordano and including Councilmember Grilli, has held two recent meetings and reviewed costs of the City Attorney's office including outside legal counsel expenditures. On June 5, 2015, the subcommittee made a recommendation to City Council to direct staff go out with a Request for Proposals (RFP) for City Attorney services to seek a contract for outside City Attorney. The Subcommittee would like to receive proposals due by July 31, 2015, to review those, and to subsequently return to Council with a recommendation on August 20, 2015. Background material on costs for this department presently and in the past is included in the agenda packet.

Recommendation: Hear report from Councilmember Giordano at the Council meeting, and vote on the recommendation from the City Attorney Subcommittee.

*** 6. Approve the 2016 Work Plan of the Community Advisory Commission (Staff Contact: Tim Wong, 408-586-3286)**

Background: The Community Advisory Commission (CAC) serves as an advisory body on matters affecting Milpitas citizens, especially matters relating to community improvement.

The CAC hosts a number of annual activities including the Spring Cleaning Day in April and the Make a Difference Day in October. Commissioners serve as the recommending body to the Council for Community Development Block Grant funding applications and for the

Neighborhood Beautification Awards nominations. At the May 6 CAC meeting, Commissioners reviewed the proposed Work Plan and recommended some revisions to their Annual Plan. The CAC recommended removing Heritage Tree nominations and Adopt-A-Neighborhood tasks since there has not been much activity in either of those areas. The CAC also decided to consolidate a number of short term public outreach goals into a singular goal. The Commission unanimously voted to approve the draft 2016 CAC Work Plan.

Fiscal Impact: None. There is no fiscal impact associated with this action.

Recommendations: Accept and approve the 2016 Community Advisory Commission Work Plan.

*** 7. Authorize and Approve Changes to the By-Laws of the Emergency Preparedness Commission (Staff Contact: Sean Simonson, 408-586-2810)**

Background: The Emergency Preparedness Commission recommends that the City Council approve changes to its by-laws in order to clarify Commissioner participation with meetings, events and projects. These recommended changes adjust the language in the Emergency Preparedness Commission by-laws to better depict the current and future membership of the body.

Recommendation: Approve changes to the Emergency Preparedness Commission By- Laws as recommended by Commissioners.

XVII. NEW BUSINESS

8. Receive Report on Status of Ballot Measures T and Z, Relating to Urban Growth Boundaries and Urban Service Areas and Provide Direction to Staff (Staff Contact: Bill Ekern, 408-586-3273)

Background: In 1998, the City Council placed a measure on the November ballot, known as Measure Z, that when passed required an ordinance amending the General Plan Land Use Plan to create an Urban Growth Boundary that would be effective for twenty years. This action limited the development with the City of Milpitas to the valley floor and the base of the foothills by prohibiting city services, such as police, fire, sewer, and water to new land use developments in the hillside area. In 2004, the City Council placed a measure on the November ballot, known as Measure T that required any amendment to the Hillside Ordinance be approved by the voters of the City of Milpitas. This measure, as with Measure Z, has a termination date of December 31, 2018.

Based on the language of the ordinances and ballots, staff believes that new sunset dates can only be set by returning to the voters, rather than the Council simply amending the adopted ordinances.

The City Council at its meeting on May 19, 2015, directed staff to return with an analysis of these ordinances to enable Council discussion addressing the sunset of these two land use ordinances.

Fiscal Impact: Should the City Council determine that placing these questions before the voters in an election, there would be the costs of the election.

Recommendation: Review material provided in the agenda packet and provide direction to staff regarding steps to either extend the requirements of these ordinances or to allow the ordinances to sunset.

9. Receive Quarterly Economic Development Report (Staff Contact: Edesa Bitbadal, 408-586-3052)

Background: The goal of the Economic Development Quarterly report is to update and inform the City Council and the public of the Economic Development Division activities and the Economic Development Workplan's progress.

Recommendation: Receive and accept the Quarterly Economic Development Quarterly report from the Economic Development Manager.

*** 10. Consider Request from Alliance Renewal Kingdom Ministries for a $500 Donation Toward ARK SAM Camp held August 3–7, 2015 (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: On May 28, 2015, the City Clerk received a "Donation or Fee Waiver/Reduction Request Application Form" from Alliance Renewal Kingdom Ministries. The request to the City Council is for a cash donation of $500 towards its summer ARK Science Arts Math Camp program held at Milpitas Christian School in San Jose, August 3–7, 2015.

Fiscal Impact: $20,000 was approved and included in the FY 2014-15 City budget for City Council's Unallocated Community Promotions. If the current donation is approved, then $12,360.25 would be the remaining balance.

Recommendation: Approve a donation of $500 to Alliance Renewal Kingdom Ministries for its SAM camp in the summer.

*** 11. Consider Request from South Bay Kids Music Group to Waive Fees of $1,480 for "We've Got the Music" Fundraising Event on July 11, 2015 (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: On June 4, 2015, the City Clerk received a "Donation or Fee Waiver/Reduction Request Application Form" from South Bay Kids, a local non-profit organization. The request to the City Council is to waive the fees for rental of the Community Center Auditorium on Saturday July 11, 2015 for the group's "We've Got the Music" special fundraising concert event. The IRS non-profit status letter was provided and a copy is included with the group's application (in agenda packet).

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 along with the donation requested above, then $10,880.25 would be the remaining balance.

Recommendation: Waive the fees of $1480 for rental of Community Center Auditorium for South Bay Kids music group fundraiser on July 11, 2015.

XVIII. ORDINANCES

*** 12. Waive the Second Reading and Adopt Ordinance No. 65.144 Regarding Solar Permit Streamlining Per State Law (Staff Contact: Keyvan Irannejad, 408-586-3244)**

Background: On June 2, 2015, the City Council introduced Ordinance No, 65.144 to implement state law Assembly Bill 2188 related to streamlined permitting process for small residential rooftop solar energy systems. No changes have been made to the ordinance since its first reading.

Recommendation: Waive the second reading and adopt Ordinance No. 65.144 regarding solar permit streamlining.

*** 13. Waive the Second Reading and Adopt Ordinance No. 208.51 to Amend the Milpitas Sanitary Code (Staff Contact: Steven Machida, 408-586-3355)**

Background: On June 2, 2015, the City Council introduced Ordinance No. 208.51 to amend Section VIII-2-5.38 of the Milpitas Municipal Code, relating to the Sanitary Sewer regulation, to comply with current regulatory requirements established by the Water Pollution Control Plant's National Pollutant Discharge Elimination System permit. No changes were made to the ordinance as introduced on June 2, 2015. Therefore, Ordinance No. 208.51 is now ready for adoption by the Council.

Recommendation: Waive the second reading and adopt Ordinance No. 208.51 amending Section VIII.2-5.38 of the Milpitas Municipal Code.

XIX. RESOLUTIONS

*** 14. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for McCarthy Blvd. Lighting & Landscape Improvements Phase 1, Project No. 3402, and Granting Authorization to the Director of Engineering to Issue the Notice of Final Acceptance after the One-Year Warranty Period and to Release the Performance Bond (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The City Council awarded the McCarthy Blvd. Lighting & Landscape Improvements Phase 1, Project Numbers 3402 to Suarez & Munoz Construction, Inc. on December 4, 2014. The project provided for the rehabilitation of portions of irrigation and lighting systems, landscaping, and correct deficiencies to comply with current regulations at the intersection of South Ranch Drive and McCarthy Boulevard and the northern monument sign location on McCarthy Boulevard near the City limits. The project was successfully completed. Staff recommends the City Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to $35,284.52, which is 10% of the final contract value. Staff also recommends the City Council authorize the Director of Engineering to issue the Notice of Final Acceptance and to release the performance bond after the one year warranty period without further City Council action, provided all warranty work is completed to the satisfaction of the Director of Engineering.

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

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of the McCarthy Blvd. Lighting & Landscape Improvements, Projects No. 3402, subject to a one year warranty period, and reduction of the faithful performance bond to $35,284.52; and granting authorization to the Director of Engineering to issue the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further City Council action.

*** 15. Adopt a Resolution Approving Plans and Specifications, Awarding a Contract to Preston Pipelines for Automated Water Meter Replacement (Phase 1), Project No. 7121, and Authorize Director of Engineering to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

Background: Plans and specifications for the Automated Water Meter (Phase 1), Project No. 7121 are completed. The project provides for the replacement of old water meters servicing the Pioneer Mobile Home Park on Dixon Landing Road and Mobilodge on North Milpitas Boulevard. A total of three new automated water meters will be installed. The meters at these locations are very old, and the new replacement meters are more accurate in documenting water consumption, and their automation would aid efficiency to the City's meter reading program. The

engineer's estimate for construction was $320,000. A copy of the title sheet of the project plans (included in the Council's agenda packet) and the complete set of plans and specifications are available for review in the City Engineer's office.

The project was advertised and one sealed bid proposal was received on May 14, 2015. The responsive one base bid was submitted by Preston Pipelines in the amount of $308,600. No protest was filed.

As was previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy (copy of policy is included in the Council agenda packet). This policy allows for the timely completion of the Automated Water Meter (Phase 1) Project, while addressing the need to respond swiftly to construction conditions and approving necessary change orders, in order to limit potential claims or risk to the City. The construction contingency established for this project is $46,000; approximately 15% of the total contract value, and the change order authority would not exceed this amount and would not require an additional appropriation.

Alternative: Failure to adopt the resolution would result in older water meters at mobile homes not being replaced with new more accurate technology that would provide improved water use documentation.

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

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

Recommendation: Adopt a resolution:

1. Approving the Plans and Specifications for Automated Water Meter (Phase 1), Project No. 7121;
2. Awarding a contract to Preston Pipelines and authorize the City Manager to execute the contract for the Automated Water Meter (Phase 1), Project No. 7121, in the amount of $308,600.00; and
3. Authorizing the Director of Engineering to negotiate execute contract change orders for Automated Water Meter (Phase 1), in the cumulate amount not to exceed $46,000.

*** 16. Adopt a Resolution to Release Unclaimed Checks (Staff Contact: Gabrielle Tsang, 408-586-3131)**

Background: According to City of Milpitas' Standard Operating Procedure No. 26-1, which conforms to California Government Code Section 50055, unclaimed checks of less than $15, or any amount if the depositor's name is unknown, which remain unclaimed for more than one year may be transferred to the General Fund by authorization of the City Council. A list of unclaimed checks and credits of less than $15, which remain unclaimed for more than one year, is included in the Council's agenda packet.

Fiscal Impact: The recommended action will increase General Fund revenues by $3,487.34.

Recommendation: Adopt a resolution transferring a total of $3,487.34 in unclaimed checks and credits, per the list generated by the City's Finance Department to the General Fund and according to standard operating procedure.

*** 17. Adopt a Resolution Approving Condition of Approval Language Requiring New Residential Development Projects be Subject to a Future Affordable Housing Ordinance (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: At its meeting of June 2, 2015, the City Council directed staff to prepare condition of approval language subjecting all residential development projects not yet in the pipeline to a future affordable housing ordinance. The ordinance cannot be adopted without a nexus study determining how development projects impact the need for affordable housing. It will take many months to complete the nexus study and in the interim this condition will give notice to new residential project applicants that they will be subject to the new ordinance when it is adopted. This proposed condition provides notice to residential developers of the anticipated effect of the future ordinance so that they will have a specific idea of what level of affordable housing will be expected of them for residential developments. The proposed condition of approval will only apply to residential developments or to the residential portion of mixed-use developments.

Fiscal Impact: Revenue neutral but should augment the affordable housing stock within the City of Milpitas

Recommendation: Adopt a resolution approving condition of approval language requiring new residential development projects to be subject to a future affordable housing ordinance.

XX. AGREEMENTS & BIDS

*** 18. Approve Amendment No. 5 to the Master Agreement with County of Santa Clara for the Senior Nutrition Program (Staff Contact: Stephanie Douglas, 408-586-3226)**

Background: The City of Milpitas has contracted with the County of Santa Clara to help implement the Senior Nutrition Program since March 1978. The parties entered into a Master Agreement in July 2011 to implement the Senior Nutrition Program, which has subsequently been amended four times and will expire on June 30, 2015. This program serves seniors, sixty years and older, 249 days per year, an average of 90 meals per day, for a total of 22,410 meals per year. The total budget for the FY 2015-16 Nutrition Program is $170,307. Under the proposed Amendment No. 5 to the Master Agreement for the Senior Nutrition Program, the City of Milpitas and the County of Santa Clara would equally share the cost of the program for FY 2015-16, which would amount to a burden of $85,123 each (after reimbursements), as outlined in Amendment No. 5. Under the Master Agreement, the City would initially pay all costs and the County would reimburse the City its 50% cost share after the receipt of invoices and other documentation.

Fiscal Impact: None. Sufficient funds have been budgeted in the Recreation Services Department FY 2015-16 operating budget.

Recommendation: Approve Amendment No. 5 to the Master Agreement with the County of Santa Clara for the Senior Nutrition Program extending the term to June 30, 2016.

*** 19. Authorize Renewal of Agreement for Excess Workers' Compensation Insurance Contracted via Brown & Brown of California and Authorize Payment (Staff Contact: Emma Karlen, 408-586-3145)**

Background: The City carries excess workers' compensation insurance in accordance with state law. The City's insurance broker is Brown & Brown of California which was able to retain coverage through Safety National Casualty Corporation for fiscal year 2015-16. For the last fiscal year 2014-15, the cost of the excess workers' compensation was $126,878. This year, payroll has an overall increase of approximately 4.58%. The City's self-insured retention is $1,000,000 for Safety employees and $750,000 for Miscellaneous employees. The renewal premium for fiscal year 2015-16 is $132,691 and is based on the City's payroll.

Fiscal Impact: None. There are sufficient funds allocated in the Human Resources Department FY 2015-16 budget.

Recommendation: Authorize the City Manager to pay Brown & Brown of California the premium rate of $132,691 and authorize Safety National Casualty Corporation to provide for the City's excess workers' compensation insurance for FY 2015-16.

*** 20. Authorize the Purchase of LED Retrofit Street Light Fixtures for a Total Amount of $206,625 from HD Supply Power Solutions (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The City's Purchasing Agent worked with the Engineering Department to develop an Invitation For Bid soliciting 1,750 LED Retrofit Street Light Fixtures (1,250 in 70 watts and 500 in 100 watts). This purchase is for Phase II of the CIP 4266 Street Light Improvement Project to convert street lighting to more energy efficient lighting. On April 17, 2015, IFB #2090 was advertised in the local newspaper, on the City website and through the *Public Purchase* website. On May 22, 2015, eight bidders responded to the IFB, with two bidders including an alternate bid and one being disqualified for failure to submit required documentation. Here is a summary of the qualified bids received:

Bidder	Total Bid Amount
Azco Supply, Inc.	$226,947.66
Azco Supply, Inc. (Alt.)	$226,947.66
West-Lite Supply Company	$226,414.78
Graybar Electric Co., Inc.	$225,520.31
JAM Services	$236,805.84
Omega Pacific Electrical	$227,385.38
Stewart Electric Supply, Inc.	$229,954.59
HD Supply Power Solutions, LP	$311,160.94
HD Supply Power Solutions, LP (Alt.)	$206,625.00

Apparent low bidder, HD Supply Power Solutions LP, provided street light fixtures for other municipalities throughout California. Its bid was deemed the lowest responsible and responsive bid of those submitted. After posting the Notice of Intent to Award (Pending Bid Results), there was no protest filed.

Fiscal Impact: None. This purchase will be funded by CIP Project No. 4266 Street Light Improvement Project.

Recommendation: Authorize the purchase of 1,750 LED retrofit street lights in the total amount of $206,625.00 from HD Supply Power Solutions.

*** 21. Approve Agreements with Nine Vendors for FY 2015-16 Recreation Services Programs (Staff Contact: Dale Flunoy, 408-586-3228)**

Background: Recreation Services staff has nine individual vendor agreements for classes and camps whose payment exceeds $20,000. The proposed agreements are between the City of Milpitas and Barry Poole, Noteworthy Music, Jensen Performing Arts, Music Together (Irene Saxe), Communication Academy, Mad Science of the Bay Area, South Bay Scholars, Bay Area Gurukul, LLC and Center Stage Performing Arts. The vendor companies provide personnel, instruction, and supplies for their contracted Recreation Services classes and camps.

City Council is requested to approve nine agreements with the nine vendors for amounts noted:

1) Communication Academy – $22,000.00
2) Mad Science of Bay Area – $22,500.00
3) Barry Poole (tennis instructor) – $40,000.00
4) Irene Saxe and Music Together – $24,000.00

5) Noteworthy Music – $35,000.00
6) South Bay Scholars Basketball Camps – $22,000.00
7) Jensen Performing Arts – $90,000.00
8) Center Stage Performing Arts – $30,000.00
9) Bay Area Gurukul, LLC - $90,000.00

Fiscal Impact: None. Funds were approved by the City Council in the FY 2015-16 budget and are available in the Recreation Services operating budget for the payment of theses services.

Recommendation: Approve nine separate agreements between the City of Milpitas and the nine vendors for classes and camps in their appropriate dollar amounts for Fiscal Year 2015-16.

*** 22. Approve a Non-Exclusive Collection, Transportation and Recycling of Non-Putrescible Debris Agreement with Recology South Bay (Staff Contact: Steven Machida, 408-586-3355)**

Background: In accordance with Title V, Chapter 200 of the Milpitas Municipal Code, debris box haulers are required to enter into a standard agreement with the City in order to gain the right to collect and dispose of non-organic waste and/or construction and demolition debris from Milpitas residential and commercial sites.

Staff reviewed the application from Recology South Bay (Recology) and found it in accordance with the City's requirements. Recology intends to haul general debris box waste such as construction and demolition waste and will pay a fee of 12% of gross receipt to the City for the right to collect the construction and demolition debris. The term of the agreement will be for one year with authority for staff to administratively review collections under the agreement and grant a maximum of five one-year extensions upon a finding of compliance with its terms.

California Environmental Quality Act: This matter is exempt from CEQA.

Alternative: Milpitas residential and commercial customers will have a shorter list of optional debris box haulers for price and service comparison.

Recommendation: Approve a Non-Exclusive Collection, Transportation and Recycling of Non-Putrescible Debris Agreement with Recology South Bay.

*** 23. Reject the Apparent Low Bid from OnPoint Construction, Authorize Staff to Repackage and Re-advertise 2014 Soundwall Renovation Project No. 4267 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On April 21, 2015, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for 2014 Soundwall Renovation, Project No. 4267. The project provides for renovation and repair of City owned precast concrete soundwalls along Jacklin Road and adjacent to Del Rio Court and Tularcitos Creek. The Engineer's Estimate for the project was $375,000.

The project was advertised and only one sealed bid proposal was received on May 13, 2015. The apparent low bid was submitted by OnPoint Construction in the amount of $594,827.00. Staff has performed an investigation and outreach to contractors to determine the reasons for only receiving a single bid with the high price. Apparently, the job market demand for painting, and precast soundwall work is high at this time, and contractors have a full work schedule such that they are not actively bidding new work. Staff believes the single high priced bid may not represent a true and accurate cost for the work requested under this project, and better bid proposals may be received bidding at a later time. Therefore, Staff recommends a rejection of the single apparent low bid from OnPoint Construction, and to authorize staff to revise, repackage, and re-advertise the project plans and specifications for bid proposals.

Alternative: Denial of this request would result in award to the single low apparent bid as required by law.

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

Recommendations:
1. Reject the apparent low bid from OnPoint Construction in the amount of $594,827, and
2. Authorize staff to repackage and re-advertise the project for bid proposals for the 2014 Soundwall Renovation, Project No. 4267.

*** 24. Approve Two Consultant Agreements and Amendment No. 2 to an Agreement with RMC Water and Environment for Engineering Services Related to Recycled Water Pipeline Extensions, Conversion of Augustine Park and Community Garden to Recycled Water, and Backfill Staff Support Totaling $551,351, and Approve a Budget Appropriation for CIPs No. 7118 and No. 7126 (Staff Contact: Steven Machida, 408-586-3355)**

Background: This report includes three agreements with RMC Water and Environment. City Council is requested to approve four actions to continue the work described herein:
1. Approve a consultant agreement with RMC Water and Environment (RMC) to prepare preliminary engineering design documents for planned recycled water pipeline extensions easterly across I-680 and into the Milpitas hillsides. These documents will also serve as the basis for external grant and loan funding applications.
2. Approve a consultant agreement with RMC to prepare plans to convert Augustine Park and the Community Garden to recycled water. This effort is included in the proposed Water Conservation Program discussed elsewhere on this agenda.
3. Approve Amendment No. 2 to the consultant agreement to provide part-time staff assistance.
4. Approve a budget appropriation of $482,792.

The proposed work is described in more detail below.

1. **Background of the first action CIP No. 7118:** On May 5, 2015, the City Council received a staff report on Water Supply Augmentation, and directed staff to continue with the work plan tasks for conservation, recycled water, and ground water wells. The City planned recycled water pipeline extensions east of I-680 to serve schools, parks, hillside golf courses and general landscaping for an estimated cost of $37 million. The State is currently developing several funding programs for recycled water projects, and anticipates receiving applications this summer for Proposition 1 and State Revolving Loan funds. Staff reviewed preliminary guidance information and determined that several documents are required to be prepared and submitted with the applications for recycled water funding. RMC was selected from the City's list of consultant engineers to prepare these documents for the following reasons: RMC's past experience in preparing these documents for other agencies, RMC is designing the first phase of the recycled water pipeline extension, and RMC recently prepared the Recycled Water Master Plan Update for South Bay Water Recycling and the Santa Clara Valley Water District.

The work consists of reviewing proposed pipeline alignments and hydraulic modeling results, pump station and tank siting, customer coordination and documentation, environmental documents, mapping, preliminary design, construction cost estimates, and preparation of Proposition 1 funding application. Most of these documents are necessary for preliminary engineering design, even if the City were not pursuing outside funding. The work is estimated to cost $482,792.

California Environmental Quality Act: The project is exempt under CEQA Guidelines Section 15262 (Feasibility and Planning Studies).

Alternative: The consultant agreement and budget appropriation are needed in preparation for the City's application for outside funding for planned recycled water pipeline extensions. If the agreement and appropriation are not approved the project would not proceed.

Fiscal Impact: A budget appropriation from the Water Fund is necessary to begin the work. There are sufficient reserves in the Water Fund; however the balance may temporarily drop below the level established by Council policy (30% of operating costs). The proposed water rates include costs for a possible $15 million bond program. The Water Fund may be reimbursed from the water revenue bond proceeds when issued. Staff is also pursuing grants and loans.

2. **Background of the second action CIP No. 7126**: As noted elsewhere on this agenda, the water supply shortage is serious. One aspect of the proposed Water Conservation Program is to convert irrigation sites from potable water to recycled water use. Staff has identified a priority list of City-maintained irrigated sites, such as parks and street medians, currently served by potable water that could be converted to recycled water use. Plans, showing conversion details, must be submitted to South Bay Water Recycling (SBWR) and the State Water Resources Control Board (SWRCB) for approval. Two of the priority sites are Augustine Park and the Community Garden, which are served by a common irrigation meter. Recycled water use for vegetable gardens is allowed by both SBWR and the SWRCB but the SWRCB also requires a potable water sink for vegetable rinsing. The Guadalupe Community Garden located in San Jose has been using recycled water since 2008.

In order to expedite the conversion process, two consultants were selected from the Engineering Division's consultant list. It is recommended to divide preparation of conversion plans between the two consulting firms. RMC Water & Environment was selected for conversion of Augustine Park and the Community Garden. The proposed agreement is in the amount of $26,559 for a term from June 16, 2015 to June 30, 2016.

California Environmental Quality Act: The project is exempt under the following Sections of the CEQA Guidelines:

- Section 15302(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity
- 15303(d) Water main and other utility extensions of reasonable length to serve new construction or conversion of small structures
- 15304(b) Minor alterations to land including new gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping
- 15307 Actions By Regulatory Agencies for Protection of Natural Resources

Fiscal Impact: None. The funding for this work is subject to budget appropriation approval in the public hearing matter on this agenda, regarding water conservation.

3. **Background of the third action:** On October 7, 2014, the City entered into an Agreement with RMC Water and Environment, Inc for support to backfill City staff vacancy in the Utility Engineering Section for water/recycled water distribution and wastewater collection systems through June 30, 2015. The City Council approved Amendment No. 1 for $58,000 for additional services on April 7, 2015 and extended the term to December 31, 2015. Staff recommends increasing the agreement in the amount of $42,000 for continued support anticipated to be needed through December, 2015. This will bring the total value of the agreement to $127,734. The proposed Amendment No. 2 is included in the Council packet.

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

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

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

4. **Background of fourth action:** A budget appropriation of $482,792 from the Water Fund to CIP No. 7118 is necessary to perform preliminary engineering and external funding applications for the recycled water line extensions. Approval of the Water Conservation Program and its budget appropriation discussed elsewhere on this agenda will provide sufficient funding to prepare retrofit plans for Augustine Park and the Community Garden. There are sufficient funds in the Utility Engineering operating budget to cover staff backfill support.

Recommendations:

1. Approve a consultant agreement with RMC Water & Environment for engineering services in the amount of $482,792 for CIP No. 7118.
2. Subject to budget appropriation approval in the public hearing matter on this agenda regarding water conservation, approve a consultant agreement with RMC Water & Environment for engineering services in the amount of $26,559 for CIP No. 7126.
3. Approve Amendment No.2 to the consultant services agreement with RMC Water and Environment for Utility Engineering support in the amount of $42,000.
4. Approve a budget appropriation of $482,792 from the Water Fund to CIP No. 7118.

*** 25. Approve a Consultant Agreement with Water Solutions, Inc. for Engineering Services in the Amount of $427,000, Approve a New Capital Improvement Project Supervisory Control and Data Acquisition (SCADA), Project No. 7127, and Approve a Budget Appropriation of $50,000 (Staff Contact: Steven Machida, 408-586-3355)**

Background: On May 5, 2015, the City Council received a staff report on Water Supply Augmentation, and directed staff to develop a work plan tasks for conservation, recycled water, and ground water wells. The work plan for groundwater system expansion and conservation improvements has been completed for an estimated cost of $25 million. The State is currently developing several funding programs for potable water project, and anticipates receiving applications this summer for Proposition 1 and State Revolving Loan funds. Staff reviewed preliminary guidance information and that several documents are required to be prepared and submitted with the applications. Water Solutions Inc. (WSI) was selected from the City's list of consultant engineers to prepare these documents for the following reasons: WSI's recent experience of the preparation in the Water Supply Augmentation Feasibility Report and technical experience in water systems, design and operations, including underground wells.

The work consists of reviewing and/or preparing mechanical equipment, proposed Supervisory Control and Data Acquisition, (SCADA) for operations, and proposed water quality treatment for existing groundwater wells, well sitting, technical recommendations, environmental documents, mapping, preliminary design, construction cost estimates, and preparation of Proposition 1 funding application. Most of these documents are necessary for project design, even if the City were not pursuing outside funding. The work also includes next step evaluations for the smart meter program and water leak detection system.

Cost estimate for this work is $427,000. The well improvement portion is estimated to cost $327,000 and will be funded from Well Upgrade Project, CIP No 7076. The Smart Meter work is estimated to cost $50,000 and will be funded from CIP Automated Meter Replacement Project, CIP No. 7121. It is necessary to create a new CIP Supervisory Control and Data Acquisition Project, CIP No. 7127, and appropriate $50,000 for this work. The consultant agreement, CIP sheet project description, and a budget appropriation form are included in the Council packet.

California Environmental Quality Act: This is not a project under CEQA as there will be no direct physical change or a reasonably foreseeable indirect change to the environment. Additionally, this is exempt under CEQA Guidelines Section 15262 (Feasibility and Planning Studies).

Alternative: The consultant agreement and budget appropriation are needed to prepare for the City's application for outside funding for planned groundwater well system expansion and conservation improvements. The project will not proceed if the agreement and appropriation are not approved.

Fiscal Impact: Proposed work will be funded as follows:

- Appropriate $50,000 from the Water Fund for a new Project No. 7127, Supervisory Control and Data Acquisition
- $50,000 from Project No. 7121, Automated Water Meter Replacement; there are sufficient funds in the project budget
- $327,000 from Project No.7076, Well Upgrade Project; there are sufficient funds in the project budget

A budget appropriation from the Water Fund is necessary at this time to provide funding. The proposed water rates include costs for a $15 million bond program to begin the work. The Water Fund and Well Upgrade Project may be reimbursed from the water revenue bond proceeds when issued. Staff is also pursuing grants and loans.

Recommendations:

1. Approve the consultant agreement with Water Solutions, Inc. for engineering services in the amount of $427,000.
2. Approve a new Capital Improvement Project, Supervisory Control and Data Acquisition (SCADA), Project No. 7127.
3. Approve a budget appropriation in the amount of $50,000 from the Water Fund to Project No. 7127.

*** 26. Approve Consultant Agreement with HydroScience Engineers, Inc for Engineering Services in the Amount of $51,000 for CIP No. 7126 (Staff Contact: Steven Machida, 408-586-3355)**

Background: The water supply shortage is serious. One aspect of the proposed Water Conservation Program is to convert irrigation sites from potable water to recycled water use. Staff has identified a priority list of City-maintained irrigated sites, such as parks and street medians, currently served by potable water that could be converted to recycled water use. Plans, showing conversion details, must be submitted to South Bay Water Recycling (SBWR) and the State Water Resources Control Board (SWRCB) for approval. In order to expedite the conversion process, staff has selected two consultants from the Engineering Division's consultant list and recommends dividing preparation of conversion plans between the two consulting firms.

Hydroscience was selected for conversion of areas on San Francisco Public Utilities Commission Right of Way between Russell Lane to Paseo Refugio. The work consists of preparation of construction plans for the conversion. The fee is reasonable for the proposed work.

California Environmental Quality Act: The project is exempt under the following Sections of the CEQA Guidelines:

- Section 15302(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity
- 15303(d) Water main and other utility extensions of reasonable length to serve new construction or conversion of small structures

- 15304(b) Minor alterations to land including new gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping
- 15307 Actions By Regulatory Agencies for Protection of Natural Resources

Fiscal Impact: None. The funding for this work is subject to budget appropriation approval in the public hearing matter on this agenda, regarding water conservation.

Recommendation: Approve consultant agreement with HydroScience Engineers, Inc. for engineering services in the amount of $51,000 for CIP No.7126.

*** 27. Approve Amendment No. 1 to the Agreement with Biggs Cardosa Associates, Inc. for the Midtown Parking Garage Fire Door Conversion, Project No. 3407 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On December 3, 2014, the City entered into a consultant agreement with Biggs Cardosa Associates, Inc. in the amount of $17,000 to provide design services required to convert the manual hand operated fire doors at the Midtown Parking Garage and the Library to an electric motor operated system. The term of the agreement is from December 3, 2014 to December 4, 2015.

The existing electric sub panel within the parking garage does not have sufficient capacity and circuit breakers to serve the motor operated roll-up fire door systems. Staff requests the approval of Amendment No. 1 with Biggs Cardosa Associates Inc. for additional electrical testing and design services for installation of a new sub panel with associated circuit breakers and wiring. The new panel will provide required panel circuit breakers for the installation of the electric motors for the roll-up fire doors as well as the future electric vehicle charging station project. Staff negotiated a scope and fee for these additional services not to exceed $6,900.00 for a total contract amount of $23,900.

Fiscal Impact: None. There is sufficient budget is the project budget for this amendment.

Recommendation: Approve Amendment No. 1 to the agreement with Biggs Cardosa Associates, Inc. in the amount of $6,900.00 and extend the term to June 17, 2016 for the Midtown Parking Garage Fire Door Conversion, Project No. 3407.

*** 28. Approve Pre-Qualified Bidders List, Project Plans and Specifications, and Authorize Advertisement for Bid Proposals from Pre-Qualified Bidders for the Milpitas Sports Center Pool Repair, Project No. 3408 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: Plans and specifications have been completed for the Milpitas Sports Center Pool Repair Project No. 3408. The work includes resurfacing of the yard, meter, and training pools, installation of new Americans with Disabilities Act (ADA) entries, lighting, concrete deck, drainage systems, shade structures, and related equipment and appurtenances. The project will also remove the non-operational wading pool which is a safety hazard. The Engineer's estimated cost for this work is $1,500,000.

A copy of the title sheet of the project plans is included in the Council's agenda packet and the complete set of plans and specifications are available for review in the office of the City Engineer.

On April 21, 2015, the City Council authorized staff to issue a request for prequalification statement from prospective bidders for this project. Staff reviewed the submitted qualification statements and determined that all four of the prospective bidders meet the qualification criteria. If Council approves this pre-qualified bidders list and authorizes advertising for bid proposals for the Sports Center Pool Repair Project, only bidders on the approved list will be authorized to

submit bids for the project. The list of the prospective bidders meeting the pre-qualified criteria is included in the Council agenda packet.

Alternative: Denial of this request would result in not completing needed repairs resulting in further deterioration and potentially unsafe conditions.

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

Fiscal Impact: Additional funding will be requested at the time of award in order to award this project.

Recommendations:

1. Approve the pre-qualified bidders list for the Milpitas Sports Center Pool Repair Project No. 3408.
2. Approve Plans and Specifications for Milpitas Sports Center Pool Repair and authorize advertisement for bid proposals from pre-qualified bidders.

*** 29. Authorize the City Manager to Execute an Agreement with the Silicon Valley Regional Interoperability Authority (Staff Contact: Armando Corpuz, 408-586-2534)**

Background: In 2001, the Santa Clara County City Managers Association agreed to jointly fund a countywide radio interoperability and public safety radio and data communications network to improve public safety and emergency services. This network, to be known as the Silicon Valley Regional Communications system, will integrate with nearby regional public safety communication systems.

This Memorandum of Understanding (MOU) establishes the City of Milpitas' financial commitment and support to the Silicon Valley Regional Interoperability Authority (SVRIA) for the construction and maintenance of the SVRCS. The MOU defines SVRIA's obligations to maintain and operate the SVRCS. Costs to each city on the SVRCS are based on the percentage of users on the system. The City of Milpitas' construction commitment from FY 2015-16 through FY 2017-18 will total $691,510.00. The City's operation and maintenance costs from FY 2018-19 through FY 2028-29 will be $1,052,025.00. This agreement expires on December 31, 2029.

On May 11, 2015, the City Council approved the SVRCS to be funded through FY 2019-20 as a 2015-2020 Capital Improvement Project.

Fiscal Impact: None. The SVRCS is an approved 2015-2020 Capital Improvement Project. Funding beyond FY 2019-20 will be determined at a later date.

Recommendation: Approve and authorize the City Manager to execute the agreement with the Silicon Valley Regional Interoperability Authority (SVRIA).

XXI. ADJOURNMENT

NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 4, 2015 AT 7:00 P.M.

June 2015						
S	M	T	W	T	F	S
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August 2015						
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MILPITAS CITY COUNCIL CALENDAR

July 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		NO COUNCIL MEETINGS IN JULY	**1** **7:30 AM**-VTA Northeast Group (JE)	**2** **5:30 PM**-VTA Board of Directors (JE) **7:00 PM**-Bicycle Pedestrian Advisory Commission (CM)	**3** **INDEPENDENCE DAY** **City Hall Closed for Holiday** 	**4**
5	**6**	**7**	**8** **7:00 PM**-Planning Commission **7:00 PM**-Community Advisory Commission (CM)	**9** **4:00 PM**-VTA Policy Advisory Committee (CM) **4:30 PM**-Treatment Plant Advisory Committee (JE) (San Jose) **7:00 PM**-Cities Assoc of SCC (JE) **7:00 PM**-Youth Advisory Commission (DG)	**10**	**11**
12	**13** **6:00 PM**-Economic Development Commission (CM)	**14**	**15**	**16** **12:00 PM**-Santa Clara VTA Congestion Management Program & Planning Committee (JE) **7:00 PM**-Bay Area Water Supply Consv. Agency (Foster City) **7:00 PM**-Emergency Preparedness Commission (MG)	**17**	**18**
19	**20** **6:00 PM**-Campaign Finance Reform Committee **7:00 PM**-Telecommunications Commission (GB)	**21**	**22** **7:00 PM**-Planning Commission	**23** **5:30 PM**-Milpitas Chamber of Commerce Board (DG) **6:00 PM**-Sister Cities Commission (MG)	**24**	**25**
26	**27** **7:00 PM**-Arts Commission (DG)	**28** **6:00 PM**-Recycling & Source Reduction Adv. Comm. (GB)	**29**	**30**	**31**	

Printed 06/10/2015

May 2015						
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July 2015						
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MILPITAS CITY COUNCIL CALENDAR

June 2015

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

Updated 06/10/2015

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Special Meeting of Milpitas City Council**
Date:	**Monday, May 11, 2015**
Time:	**6:30 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

CALL TO ORDER

Mayor Esteves called the meeting to order at 6:30 PM. The Deputy City Clerk noted the roll.

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

Councilmember Giordano (arrived at 6:38 P.M.)

ABSENT: None

CLOSED SESSION

City Council convened in Closed Session to discuss one item. Closed session ended at 7:32 P.M.

ANNOUNCEMENT

(None out of Closed Session.)

PUBLIC FORUM

Rob Means, 1421 Yellowstone Ave. Milpitas resident, did a continuation PowerPoint presentation from last meeting regarding Skyweb Express, Echo Control System pods and Sunnyhills Neighborhood Association.

Voltaire Montemayor, Milpitas resident, commented regarding Santa Clara County water reservoirs and offered suggestions for water sources during the drought.

AGENDA APPROVAL

Vice Mayor Montano moved and seconded the approval of the agenda and it was approved by unanimous vote of the Council.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

1. CIP FY 2015-2020

City Engineer Machida provided the following documentation for distribution to City Council, City Manager, and City Attorney:

1. PowerPoint presentation slide handout entitled *Draft 2015-2020 Capital Improvement Program: City Council Meeting, May 11, 2015*
2. Errata sheet for Summary-6, *Community Improvement Projects Summary* sheet

City Engineer Machida enumerated CIP accomplishments during FY 2014-15. He also outlined the 5-year CIP plan for FY 2015-20, starting with the proposed projects for FY 2015-16.

Vice Mayor Montano inquired on the cost of building a small sidewalk or a 50-foot

walkway on the west side of Abel Street (nearby Casa Azteca Restaurant), and the possibility of including this suggestion as part of the work plan due to citizens' requests. City Engineer Machida replied that the cost would be an estimated $20 per square foot.

City Manager Williams added that if the majority of the Council wishes to provide direction for this particular project, Staff will conduct research, a field survey, and determine ownership of right-of-way. He also suggested that to help define between comments made during discussion versus Council direction to Staff, it would be best for Council to place a motion on such items.

To respond to Mayor Esteves' question, City Engineer Machida and City Manager Williams said that it would take approximately 30-40 hours of Staff time.

Motion: Direct Staff to conduct research the addition of a small sidewalk or a 50-foot walkway on the west side of Abel Street (nearby Casa Azteca Restaurant).

Motion/Second: Vice Mayor Montano / Councilmember Giordano

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

City Engineer Machida continued with his presentation regarding the 2015-16 Pavement Resurfacing Program. Currently, the City has a Pavement Condition Index (PCI) of 72, and that approximately $4.5 million annually is required to maintain the current PCI. He explained that expenditures for Fiscal Year 2014-15 were slightly higher than the prior years due to key projects such as the $3.9 million rehabilitation of Main Street in January 2015. He further reported that the Main Street project's estimated completion date is in September 2015.

Councilmember Giordano inquired as to which streets are considered as "high priority." She clarified by adding as to what criteria or basis were used to determine which streets would be done first for pavement resurfacing. City Engineer Machida replied that certain factors including the street's physical condition and citizen complaints. He pointed out that the Department does its best to spread out the improvements throughout the City, aiming to take care of "high visibility" streets first.

In reply to Councilmember Giordano's follow-up inquiry, he said that a street should ideally get pavement resurfacing once every three to five years—all while efforts would be made to prolong that given timeline.

City Engineer Machida then proceeded with his presentation by reporting on the Utilities—Water, Sewer & Storm Program. He made special mention to projects such as the Dempsey Road Waterline Replacement, the Water System Seismic Improvements, the BART Project Water Improvements, the Sewer System Replacement 12-13, and the San Jose / Santa Clara Regional Waste Water Plant Improvements.

Councilmember Giordano mentioned about the water breaks that have occurred this year, including the water break near Temple Drive, and asked as to whether the City was having a higher incidence of water breaks than prior years. City Engineer Machida clarified that although there were more water breaks this year, the percentage rise in such incidents were not significant. He added that the Department continues to focus more closely on the Dempsey Road Waterline due to its age as well as the damage that could occur due to soil movement and shifting.

City Engineer Machida reported that there could be an opportunity for a private-public partnership with the Santa Clara Valley Water District and Spring Valley Golf Course in terms of extending the City supply of recycled water up the hill for the golf courses. This would not only provide water to the golf courses, but would also provide additional

supply for Ed Levin Park as well as a pond to be used by CalFire when needed. In response to Vice Mayor Montano's inquiry, he replied that there would be "cost sharing" between the County, Spring Valley Golf Course, and the City if the project is approved.

Councilmember Giordano asked City Engineer Machida and Mayor Esteves further direction on how to proceed in terms of the recommendations put forth by the Planning Commission.

After a brief discussion, consensus was reached that Council should make a series of motions to approve (or disapprove) specific items in the proposed CIP for FY 2015-16 aside from making the overall motion to approve (or disapprove) the proposed CIP for FY 2015-16. Staff, on the other hand, would make note on items specified per Council direction—with studies being conducted to explore the feasibility of the projects, and to determine a "target fiscal year" to complete projects deemed feasible.

Councilmember Giordano then suggested for the Council to approve the Planning Commission's recommendations for FY 2015-16.

Mayor Esteves agreed with Councilmember Giordano's motion, with the removal of the last recommended item—the "Circulator Loop." He noted that the project would be "redundant" since the City already has a good amount of pedestrian amenities. He then opened the floor to the rest of the Council. This is Item #6 on the Planning Commission Recommendations.

Councilmember Grilli wished to move the Skate Park timeline back to its original Fiscal Year 2017-18 target date. Noting that the item needed further consideration, she requested this item to be removed from the motion. This is Item #5 on the Planning Commission Recommendations.

Vice Mayor Montano had more inquiries regarding Item #3 on the Planning Commission Recommendations: Encourage residents to install rooftop solar water heaters and provide incentives for low income seniors. She then agreed with Mayor Esteves' suggestion for Staff to conduct a feasibility study regarding this item.

Motion: Approve Planning Commission Recommendations for Fiscal Year 2015-16 as follows:

- Accept Item #1
- Accept Item #2
- Item #3 to be investigated further via feasibility study
- Accept Item #4
- Remove Item #5
- Remove Item #6

Motion/Second: Councilmember Giordano / Vice Mayor Montano

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

City Engineer Machida continued his CIP Report with the proposed 2016-20 CIP Community Improvements.

Vice Mayor Montano asked regarding the renovation of City parks while ensuring equity. She asked for a list of all City parks, delineating which parks have been renovated within the past 10 years. Staff provided preliminary information via overhead projector. She and Mayor Esteves requested for more information regarding this topic on the next Council Meeting.

Councilmember Barbadillo shared that the Parks, Recreation & Cultural Resources Commission (PRCRC) did consider factors such as equity. Recreation Services Manager Renee Lorentzen, per Councilmember Barbadillo's request, clarified and explained that the Recreation and Engineering Departments worked together in reviewing the 2009 Master Plan. In the review process, parks that have not been renovated were identified. The parks listed as un-renovated were then plotted as points in a City map, ensuring that the renovations proposed and eventually made would be "spread" throughout the City.

City Engineer Machida continued with his report by discussing the CIP unidentified funding summary as well as possible funding sources for Fiscal Year 2016-20. Possible funding sources identified were:

- 0.25% sales tax increase – generation of $5 million annually
- 2% Transient Occupancy Tax (TOT or "hotel tax") increase—generation of $2 million annually
- Implementation of storm drain fee to sufficiently fund storm drain operation and CIP
- Pay-as-you-go whenever the General Fund / Utility Funds have excess revenues

City Engineer Machida then concluded his report to Council with the following Recommendations:

- Review Proposed 2015-20 CIP
- Provide staff with direction and comment on the CIP
- Provide staff direction to hire a consultant to analyze and implement an increase in Sales Tax and / or TOT

Vice Mayor Montano commented that raising the sales tax would "make sense" and then inquired as to which neighboring cities have recently raised their sales tax.

Assistant City Manager Emma Karlen replied that the City of Campbell raised their sales tax by .25% a few years ago and that the City of San Jose is currently considering the same increase for the November 2016 Election. She added that the cities of Fremont and Hayward currently have 9.5% and 10% sales tax respectively.

Councilmember Giordano asked City Manager Williams that discussions were made regarding sales tax and TOT increases as alternative sources of funding due to the dissolution of the Redevelopment Agency and the funding that came with it. City Manager Williams answered that upon Council direction, Staff would report back to Council with a Request for Proposal (RFP), a work plan with a feasibility study which would explore tax revenue generation opportunities via a .25% sales tax increase, and a random community survey to determine support for the increase. He further added that the information gathered would help facilitate discussion on how the additional revenue should be used.

Per Councilmember Grilli's request, City Engineer Machida clarified that revenue generated via storm drain fee would be earmarked to offset costs related to storm drain operations and infrastructures.

Vice Mayor Montano inquired whether all City facilities are seismically retrofitted. City Engineer Machida replied that although some City facilities would need to be reviewed for seismic retrofitting, the majority of City-owned buildings are seismically sound and "up to Code." Vice Mayor Montano and Mayor Esteves requested for Staff to provide a list of all City-owned public facilities and whether or not the facility is seismically sound or needs seismic retrofitting.

Mayor Esteves proposed to pass the sales tax increase first, and then pass the TOT increase next time. He stated that he would like to pursue the "more meaningful" additional revenue via the sales tax increase. He added that residents would most probably vote to pass the TOT increase since this does not directly affect residents.

As much as Councilmember Grilli noted her agreement with Mayor Esteves, she suggested for the consultant's feasibility study to provide the direction on whether the City should go for both, one, or no increases based on what the public would support.

Vice Mayor Montano expressed her agreement with Mayor Esteves regarding the TOT increase, she said that it would be more cost efficient to have voters consider both increases at the same time.

In response to Mayor Esteves' inquiry regarding this issue, City Manager Williams said it would generally be more cost efficient to have voters vote on the sales and TOT tax increases at the same time rather than separately. He expressed his agreement on Councilmember Grilli's suggestion. He added that part of the consultant's consideration would be whether the tax increase(s) would be placed in the June or November 2016 ballot.

Councilmember Giordano expressed her agreement with Mayor Esteves' comments on tackling one increase instead of both at the same time, adding that she would like more information regarding the TOT increase through the consultant's feasibility study.

To clarify direction given to Staff, City Manager Williams requested the Council to make a motion regarding the four identified potential funding sources.

Motion: Direct staff to explore the four identified potential funding sources and to report back to Council with gathered information for consideration.

Motion/Second: Councilmember Giordano / Vice Mayor Montano

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

In response to Mayor Esteves' inquiry, City Engineer Machida stated that the Department would provide status reports on all CIP projects from start to finish. The status reports would indicate as to whether each project timeline was being met.

Councilmember Grilli wanted clarification regarding the breakdown of the $500,000 identified funding source for the International Park project during Fiscal Year 2015-16. Mayor Esteves offered the explanation that the appropriation would cover "common area" costs such as parking, lighting, drainage, water, and infrastructure. This fund is mutually exclusive from the $50,000 "community participant" fee.

Councilmember Grilli asked for clarification regarding the Fiscal Year 2015-16 estimated start date for the Sports Center / Sports Field project, and as to whether this project needed to be completed first before the Skate Park project can be started. City Manager Williams replied that the recommendation on construction timeline were based on factors such as funding, community input on project priorities, minimizing disruption to the community and end-users.

Citizen Rob Means proposed possible tax revenue sources which encourage ecology and environmental conservation.

Citizen Robert Marini shared his comments regarding street repaving, improving parks that currently do not utilize recycled or "gray" water, and prioritizing street repairs on the intersection of Abel Street and Calaveras Boulevard.

Citizen Voltaire Montemayor stated that Council should approve the CIP recommendation.

Citizen Martha Landon urged Council to consider prioritizing the construction of the Skate Park for Fiscal Year 2015-16 instead of the currently-proposed 2017-18 timeline.

In response to Citizen Landon's comment, Councilmember Giordano expressed that the Council did prioritize the Skate Park by moving the timeline from the initially-proposed project start date in 2020. Mayor Esteves also agreed with Councilmember Giordano's response by adding that although the Planning Commission recommended a project start date in Fiscal Year 2018-19, City Council moved to have the Skate Park's currently-proposed project start date of Fiscal Year 2017-18.

Vice Mayor Montano mentioned that opportunities exists to move the Skate Park's currently-projected start date to an earlier timeline depending upon additional funding generated from additional sales tax.

Mayor Esteves further added that while considering limited funding available, Council is doing its best to uphold the Skate Park's priority along with other high-profile projects even though other projects have been requested years before requests for the Skate Park had been brought forward for the Council's consideration last year.

Motion: To accept and approve the proposed CIP for FY 2015-20

Motion/Second: Councilmember Giordano / Vice Mayor Montano

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

2. Odor Report Update

ODOR CONTROL REPORT HANDOUT PROVIDED BY STEVEN MACHIDA FOR DISTRIBUTION.

City Engineer Steven Machida updated City Council with number of complaints about odor, as reported both to the City and to the Bay Area Air Quality Management District hotline. Per Council request from the last Odor Control Report update, staff began splitting complaints coming from Milpitas residents versus non-Milpitas residents.

City Engineer Machida also announced the following:
(1) City Staff attended the first South Bay Stakeholder Odor Group Meeting on Thursday, April 30, 2015
(2) City Manager and Staff attended meeting at the State Capitol to support AB 385—a bill introduced by Assemblymember Kansen Chu. This would require that the Local Enforcement Agency (LEA) to notify and discuss any received odor complaints with stakeholders
(3) San Jose Planning Commission continued consideration of the Planned Development Permit for Newby Island on May 6, 2015. Commission will proceed with an odor study.

After Mayor Esteves opened the floor to the public, Citizen Voltaire Montemayor shared his opinion regarding the issue.

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

Motion/Second: Councilmember Giordano / Vice Mayor Montano

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

3. International Park

Mayor Esteves mentioned that he pulled this issue from Consent to include more items to the Criteria List submitted by Staff which the City would require for Community Project participants. Additional items suggested by Mayor are criteria pertaining to:

(1) Project measurements or dimensions
(2) Structure finishing
(3) Structure material
(4) Structure quality
(5) Observance to City water conservation policies
(6) Minimal maintenance

Bill Ekern clarified for Mayor Esteves that census data that Staff proposed to use would be used to determine demographic representation in the City of Milpitas. The study results would not be used to determine "group priority."

Councilmember Giordano stated that she is not in favor of locating International Park at Tom Evatt Park. She is in favor of having the park located in a different site.

Mayor Esteves expressed support in having Tom Evatt Park as the location for the new International Park.

Bill Ekern replied to Councilmember Giordano's and the Mayor's follow-up inquiries that for clarity and efficiency, it would be advisable for a park site to be identified prior to conducting feasibility study.

Councilmember Barbadillo expressed support for an International Park. He asked Mr. Ekern to clarify details regarding the $50,000 participation fee.

Councilmember Grilli also expressed support for the project, stating that everyone who wants to participate should not be left out. She further added that the feasibility study should also address parking and accessibility issues. She also recommended for the $50,000 participation fee to be placed in the CIP fund and let staff move forward with the feasibility study.

Councilmember Giordano clarified her position by restating that she is in support of the International Park concept. She said that she would be okay with adding another park location and not losing what the City now has with Tom Evatt Park. She wished for staff to look for another location for the new International Park, and that Tom Evatt Park would be a "fallback" proposed location if there would be no alternative location.

Vice Mayor Montano mentioned her support for the International Park concept and the proposed Tom Evatt Park location. She concurred with Councilmember Grilli that the new park project should be more inclusive, and that community participation would not be hindered due to that community/demographic group's lack of funds or money towards to $50K participation fee.

Mayor Esteves suggested that (1) countries represented in International Park should be members of Milpitas' diverse population, (2).the City should take the lead by contributing $50K of CIP funds towards the International Park project, and (3) allow each community participant should pay or fund 100% of developing their part of the project. The suggestions given would allow for the City to be fair, include everyone, and encourage community groups.

Citizen Robert Marini shared his disapproval of the name "International Park."

Citizen Voltaire Montemayor shared his opinion regarding the project.

Motion: To direct staff to further refine the International Park concept with $50,000 of

CIP funds to be shouldered by the City and prepare a feasibility study and a preliminary plan starting with the location at Tom Evatt Park.

Motion/Second: Mayor Esteves / Councilmember Grilli

Motion carried by a vote of:- 4-1
AYES: (4) Mayor Esteves, Vice Mayor Montano, Councilmembers Grilli and Barbadillo
NOES: (1) Councilmember Giordano

ADJOURNMENT

Mayor Esteves adjourned the meeting at ***9:45***PM.

Meeting minutes drafted and respectfully submitted by
Pam Caronongan, Deputy City Clerk

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Special Meeting of Milpitas City Council**
Date:	**Monday, May 11, 2015**
Time:	**6:30 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

CALL TO ORDER

Mayor Esteves called the meeting to order at 6:30 PM. The Deputy City Clerk noted the roll.

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

Councilmember Giordano (arrived at 6:38 P.M.)

ABSENT: None

CLOSED SESSION

City Council convened in Closed Session to discuss one item. Closed session ended at 7:32 P.M.

ANNOUNCEMENT

(None out of Closed Session.)

PUBLIC FORUM

Rob Means, 1421 Yellowstone Ave. Milpitas resident, did a continuation PowerPoint presentation from last meeting regarding Skyweb Express, Echo Control System pods and Sunnyhills Neighborhood Association.

Voltaire Montemayor, Milpitas resident, commented regarding Santa Clara County water reservoirs and offered suggestions for water sources during the drought.

AGENDA APPROVAL

Vice Mayor Montano moved and seconded the approval of the agenda and it was approved by unanimous vote of the Council.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

1. CIP FY 2015-2020

City Engineer Machida provided the following documentation for distribution to City Council, City Manager, and City Attorney:

1. PowerPoint presentation slide handout entitled *Draft 2015-2020 Capital Improvement Program: City Council Meeting, May 11, 2015*
2. Errata sheet for Summary-6, *Community Improvement Projects Summary* sheet

City Engineer Machida enumerated CIP accomplishments during FY 2014-15. He also outlined the 5-year CIP plan for FY 2015-20, starting with the proposed projects for FY 2015-16.

Vice Mayor Montano inquired on the cost of building a small sidewalk or a 50-foot

walkway on the west side of Abel Street (nearby Casa Azteca Restaurant), and the possibility of including this suggestion as part of the work plan due to citizens' requests. City Engineer Machida replied that the cost would be an estimated $20 per square foot.

City Manager Williams added that if the majority of the Council wishes to provide direction for this particular project, Staff will conduct research, a field survey, and determine ownership of right-of-way. He also suggested that to help define between comments made during discussion versus Council direction to Staff, it would be best for Council to place a motion on such items.

To respond to Mayor Esteves' question, City Engineer Machida and City Manager Williams said that it would take approximately 30-40 hours of Staff time.

Motion: Direct Staff to conduct research the addition of a small sidewalk or a 50-foot walkway on the west side of Abel Street (nearby Casa Azteca Restaurant).

Motion/Second: Vice Mayor Montano / Councilmember Giordano

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

City Engineer Machida continued with his presentation regarding the 2015-16 Pavement Resurfacing Program. Currently, the City has a Pavement Condition Index (PCI) of 72, and that approximately $4.5 million annually is required to maintain the current PCI. He explained that expenditures for Fiscal Year 2014-15 were slightly higher than the prior years due to key projects such as the $3.9 million rehabilitation of Main Street in January 2015. He further reported that the Main Street project's estimated completion date is in September 2015.

Councilmember Giordano inquired as to which streets are considered as "high priority." She clarified by adding as to what criteria or basis were used to determine which streets would be done first for pavement resurfacing. City Engineer Machida replied that certain factors including the street's physical condition and citizen complaints. He pointed out that the Department does its best to spread out the improvements throughout the City, aiming to take care of "high visibility" streets first.

In reply to Councilmember Giordano's follow-up inquiry, he said that a street should ideally get pavement resurfacing once every three to five years—all while efforts would be made to prolong that given timeline.

City Engineer Machida then proceeded with his presentation by reporting on the Utilities—Water, Sewer & Storm Program. He made special mention to projects such as the Dempsey Road Waterline Replacement, the Water System Seismic Improvements, the BART Project Water Improvements, the Sewer System Replacement 12-13, and the San Jose / Santa Clara Regional Waste Water Plant Improvements.

Councilmember Giordano mentioned about the water breaks that have occurred this year, including the water break near Temple Drive, and asked as to whether the City was having a higher incidence of water breaks than prior years. City Engineer Machida clarified that although there were more water breaks this year, the percentage rise in such incidents were not significant. He added that the Department continues to focus more closely on the Dempsey Road Waterline due to its age as well as the damage that could occur due to soil movement and shifting.

City Engineer Machida reported that there could be an opportunity for a private-public partnership with the Santa Clara Valley Water District and Spring Valley Golf Course in terms of extending the City supply of recycled water up the hill for the golf courses. This would not only provide water to the golf courses, but would also provide additional

supply for Ed Levin Park as well as a pond to be used by CalFire when needed. In response to Vice Mayor Montano's inquiry, he replied that there would be "cost sharing" between the County, Spring Valley Golf Course, and the City if the project is approved.

Councilmember Giordano asked City Engineer Machida and Mayor Esteves further direction on how to proceed in terms of the recommendations put forth by the Planning Commission.

After a brief discussion, consensus was reached that Council should make a series of motions to approve (or disapprove) specific items in the proposed CIP for FY 2015-16 aside from making the overall motion to approve (or disapprove) the proposed CIP for FY 2015-16. Staff, on the other hand, would make note on items specified per Council direction—with studies being conducted to explore the feasibility of the projects, and to determine a "target fiscal year" to complete projects deemed feasible.

Councilmember Giordano then suggested for the Council to approve the Planning Commission's recommendations for FY 2015-16.

Mayor Esteves agreed with Councilmember Giordano's motion, with the removal of the last recommended item—the "Circulator Loop." He noted that the project would be "redundant" since the City already has a good amount of pedestrian amenities. He then opened the floor to the rest of the Council. This is Item #6 on the Planning Commission Recommendations.

Councilmember Grilli wished to move the Skate Park timeline back to its original Fiscal Year 2017-18 target date. Noting that the item needed further consideration, she requested this item to be removed from the motion. This is Item #5 on the Planning Commission Recommendations.

Vice Mayor Montano had more inquiries regarding Item #3 on the Planning Commission Recommendations: Encourage residents to install rooftop solar water heaters and provide incentives for low income seniors. She then agreed with Mayor Esteves' suggestion for Staff to conduct a feasibility study regarding this item.

Motion: Approve Planning Commission Recommendations for Fiscal Year 2015-16 as follows:

- Accept Item #1
- Accept Item #2
- Item #3 to be investigated further via feasibility study
- Accept Item #4
- Remove Item #5
- Remove Item #6

Motion/Second: Councilmember Giordano / Vice Mayor Montano

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

City Engineer Machida continued his CIP Report with the proposed 2016-20 CIP Community Improvements.

Vice Mayor Montano asked regarding the renovation of City parks while ensuring equity. She asked for a list of all City parks, delineating which parks have been renovated within the past 10 years. Staff provided preliminary information via overhead projector. She and Mayor Esteves requested for more information regarding this topic on the next Council Meeting.

Councilmember Barbadillo shared that the Parks, Recreation & Cultural Resources Commission (PRCRC) did consider factors such as equity. Recreation Services Manager Renee Lorentzen, per Councilmember Barbadillo's request, clarified and explained that the Recreation and Engineering Departments worked together in reviewing the 2009 Master Plan. In the review process, parks that have not been renovated were identified. The parks listed as un-renovated were then plotted as points in a City map, ensuring that the renovations proposed and eventually made would be "spread" throughout the City.

City Engineer Machida continued with his report by discussing the CIP unidentified funding summary as well as possible funding sources for Fiscal Year 2016-20. Possible funding sources identified were:

- 0.25% sales tax increase – generation of $5 million annually
- 2% Transient Occupancy Tax (TOT or "hotel tax") increase—generation of $2 million annually
- Implementation of storm drain fee to sufficiently fund storm drain operation and CIP
- Pay-as-you-go whenever the General Fund / Utility Funds have excess revenues

City Engineer Machida then concluded his report to Council with the following Recommendations:

- Review Proposed 2015-20 CIP
- Provide staff with direction and comment on the CIP
- Provide staff direction to hire a consultant to analyze and implement an increase in Sales Tax and / or TOT

Vice Mayor Montano commented that raising the sales tax would "make sense" and then inquired as to which neighboring cities have recently raised their sales tax.

Assistant City Manager Emma Karlen replied that the City of Campbell raised their sales tax by .25% a few years ago and that the City of San Jose is currently considering the same increase for the November 2016 Election. She added that the cities of Fremont and Hayward currently have 9.5% and 10% sales tax respectively.

Councilmember Giordano asked City Manager Williams that discussions were made regarding sales tax and TOT increases as alternative sources of funding due to the dissolution of the Redevelopment Agency and the funding that came with it. City Manager Williams answered that upon Council direction, Staff would report back to Council with a Request for Proposal (RFP), a work plan with a feasibility study which would explore tax revenue generation opportunities via a .25% sales tax increase, and a random community survey to determine support for the increase. He further added that the information gathered would help facilitate discussion on how the additional revenue should be used.

Per Councilmember Grilli's request, City Engineer Machida clarified that revenue generated via storm drain fee would be earmarked to offset costs related to storm drain operations and infrastructures.

Vice Mayor Montano inquired whether all City facilities are seismically retrofitted. City Engineer Machida replied that although some City facilities would need to be reviewed for seismic retrofitting, the majority of City-owned buildings are seismically sound and "up to Code." Vice Mayor Montano and Mayor Esteves requested for Staff to provide a list of all City-owned public facilities and whether or not the facility is seismically sound or needs seismic retrofitting.

Mayor Esteves proposed to pass the sales tax increase first, and then pass the TOT increase next time. He stated that he would like to pursue the "more meaningful" additional revenue via the sales tax increase. He added that residents would most probably vote to pass the TOT increase since this does not directly affect residents.

As much as Councilmember Grilli noted her agreement with Mayor Esteves, she suggested for the consultant's feasibility study to provide the direction on whether the City should go for both, one, or no increases based on what the public would support.

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To clarify direction given to Staff, City Manager Williams requested the Council to make a motion regarding the four identified potential funding sources.

Motion: Direct staff to explore the four identified potential funding sources and to report back to Council with gathered information for consideration.

Motion/Second: Councilmember Giordano / Vice Mayor Montano

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

In response to Mayor Esteves' inquiry, City Engineer Machida stated that the Department would provide status reports on all CIP projects from start to finish. The status reports would indicate as to whether each project timeline was being met.

Councilmember Grilli wanted clarification regarding the breakdown of the $500,000 identified funding source for the International Park project during Fiscal Year 2015-16. Mayor Esteves offered the explanation that the appropriation would cover "common area" costs such as parking, lighting, drainage, water, and infrastructure. This fund is mutually exclusive from the $50,000 "community participant" fee.

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Motion: To accept and approve the proposed CIP for FY 2015-20

Motion/Second: Councilmember Giordano / Vice Mayor Montano

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

2. Odor Report Update

ODOR CONTROL REPORT HANDOUT PROVIDED BY STEVEN MACHIDA FOR DISTRIBUTION.

City Engineer Steven Machida updated City Council with number of complaints about odor, as reported both to the City and to the Bay Area Air Quality Management District hotline. Per Council request from the last Odor Control Report update, staff began splitting complaints coming from Milpitas residents versus non-Milpitas residents.

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(2) City Manager and Staff attended meeting at the State Capitol to support AB 385—a bill introduced by Assemblymember Kansen Chu. This would require that the Local Enforcement Agency (LEA) to notify and discuss any received odor complaints with stakeholders
(3) San Jose Planning Commission continued consideration of the Planned Development Permit for Newby Island on May 6, 2015. Commission will proceed with an odor study.

After Mayor Esteves opened the floor to the public, Citizen Voltaire Montemayor shared his opinion regarding the issue.

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

Motion/Second: Councilmember Giordano / Vice Mayor Montano

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

3. International Park

Mayor Esteves mentioned that he pulled this issue from Consent to include more items to the Criteria List submitted by Staff which the City would require for Community Project participants. Additional items suggested by Mayor are criteria pertaining to:

(1) Project measurements or dimensions
(2) Structure finishing
(3) Structure material
(4) Structure quality
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Citizen Robert Marini shared his disapproval of the name "International Park."

Citizen Voltaire Montemayor shared his opinion regarding the project.

Motion: To direct staff to further refine the International Park concept with $50,000 of

CIP funds to be shouldered by the City and prepare a feasibility study and a preliminary plan starting with the location at Tom Evatt Park.

Motion/Second: Mayor Esteves / Councilmember Grilli

Motion carried by a vote of:- 4-1
AYES: (4) Mayor Esteves, Vice Mayor Montano, Councilmembers Grilli and Barbadillo
NOES: (1) Councilmember Giordano

ADJOURNMENT

Mayor Esteves adjourned the meeting at ***9:45***PM.

Meeting minutes drafted and respectfully submitted by
Pam Caronongan, Deputy City Clerk

Draft 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, 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 litigation matters.

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 recenlty, 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. 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). 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) Motion: 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) Motion: 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 EIR 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 the Milpitas Municipal Code Relating to Streamlines Permitting Process for Small Residential Rooftop Solar Systems."

(1) Motion: 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) Motion: 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) Motion: 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) Motion: 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.

Motion: 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.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

HA1

OPERATING MEMORANDUM NO. 1
TO
FIRST AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
(SOUTH MAIN SENIOR PROJECT)

Re: Extension and Assignment of DDA

A. General Background/Authority

This Operating Memorandum No. 1 ("Operating Memorandum") is entered into as of June ___, 2015, by and between the City of Milpitas Housing Authority (the "Housing Authority") and South Main Senior Lifestyles, LLC (the "Developer"). This Operating Memorandum is entered into in accordance with the terms of Section 10.20 of the Disposition and Development Agreement entered into by and between the Housing Authority and the Developer as of August 18, 2009, as amended by an Amendment entered into as of October 18, 2011, and as fully amended and restated as of November 19, 2013 (collectively, the "Agreement"). Capitalized terms used but not defined in this Operating Memorandum shall have the meanings given in the Agreement.

The purpose of this Operating Memorandum is to implement the terms of the Agreement, with particular reference to Sections 1.4.1, 3.6, 5.1, 7.4, 10.2 and 10.9 of the Agreement and the Schedule of Performance attached thereto as Exhibit D, by (i) extending the dates for the occurrence of certain events set forth in the Agreement and the Schedule of Performance; (ii) approving the Transfer of the Agreement with respect to each Development Phase and its related Development Parcel to one or more joint venture entities to be formed by Developer with a certain equity investor in order to obtain equity capital for the Project; and (iii) approving an Operator for the Project. Paragraph B below sets forth further background and facts in connection with the purposes of this Operating Memorandum.

Section 10.20 of the Agreement expressly authorizes the parties to enter into this Operating Memorandum in order to make mutually acceptable refinements and adjustments with respect to the performance of the Agreement; provides that this Operating Memorandum does not constitute an amendment of the Agreement; and expressly authorizes the Executive Director to execute this Operating Memorandum on behalf of the Housing Authority without prior notice, hearing, or other action of the Housing Authority's Board. Sections 1.4.1, 3.6, 5.1, 10.2. 10.9 and 10.20 of the Agreement expressly authorize the Executive Director to extend any dates set forth in the Schedule of Performance, to approve any Transfer and to approve an Operator, all by executing this Operating Memorandum in his or her discretion without prior notice, hearing or other action of the Housing Authority's Board.

B. Agreements

1. Background and Facts. This Operating Memorandum is entered into with reference to the following background and facts:

(a) The Agreement provides a Closing Deadline of November 19, 2015 for the closing of Developer's acquisition of the Property. Developer has made substantial progress in its prosecution of the Project but, despite the Developer's diligent efforts in that regard, additional time is needed to satisfy the remaining conditions precedent to the Housing Authority's conveyance of the Property related to the development of the Phase One Development. Developer has identified an equity investor/developer that will enable Developer to satisfy the remaining conditions precedent and complete the acquisition of the Property in accordance with the Agreement. Sections 3.6, 5.1 and 10.2 of the

Agreement authorize the Executive Director, acting alone in his sole discretion by execution of this Operating Memorandum, to extend the Closing Deadline and other dates set forth in the Schedule of Performance for the satisfaction of certain requirements. Developer has requested an extension of the Closing Deadline from November 19, 2015 until June 30, 2017, with commensurate extensions of the respective outside dates for the commencement and completion of construction of each Development Phase. The Executive Director has determined that granting such request is necessary and appropriate to enable the Developer to continue the development of the Project and otherwise further the purposes of the Agreement.

(b) After reviewing the materials and information submitted by Developer describing the financial condition and track record of The Wolff Company, the Executive Director has determined that The Wolff Company and its affiliates have the qualifications, experience, financial resources and development capacity that are necessary and adequate to competently complete construction of each Development Phase of the Project and to otherwise fulfill the obligations undertaken by the Developer under the Agreement.

(c) Based on the information provided by the Developer describing the identity, financial capacity, operating experience and other qualifications of Integral Senior Living ("ISL") as the proposed Operator of the Phase One Development, the Executive Director has determined that ISL has the necessary financial capacity and experience to satisfactorily operate the Phase One Development as a "continuum of care" facility in the manner contemplated by the Housing Authority Documents, including providing the types of services and amenities to residents (without regard to income level) generally described in the Scope of Development (Exhibit B to the Agreement) and providing the Affordable Units pursuant to and in accordance with the Phase One Regulatory Agreement.

2. Extensions. The Closing Deadline set forth in Section 3.6 of the Agreement is hereby extended to June 30, 2017, and the due dates set forth in the Schedule of Performance for the following items are hereby also modified as follows:

Item	**Section Reference**	**Action**	**Due Date**
B.16	3.6	Closing	June 30, 2017
B.17	5.1	Commencement of Construction(Phase One)	By the earlier of (a) 30 days after the Closing Date, or (b) 7/31/17
B.18	5.1	Completion of Construction (Phase One)	By the earlier of (a) 24 months after the Closing Date, or (b) July 31, 2019
C.10	5.1	Commencement of Construction (Phase Two)	Unless a later date is agreed upon, by the earlier of (a) 24 months after issuance of Certificate of Completion for Phase One Development, or (b) June 30, 2021
C.11	5.1	Completion of Construction	By the earlier of (a) 24 months after the

		(Phase Two)	commencement of construction, or (b) June 30, 2023

3. Transfer of DDA. Pursuant to Section 7.4 of the Agreement, the Housing Authority hereby approves the Developer's Transfers of either or both Development Phases (and the portion(s) of the Agreement applicable thereto) to either a single, or two separate, limited partnerships or limited liability company(ies) to be formed between Developer, Wolff Partners LLC and/or Wolff Real Estate Partners LP (and/or other affiliate(s) of The Wolff Company), and of which Wolff Partners LLC or its controlled affiliate will be the managing member or general partner, and such Transfers may occur either separately or together in a single Transfer; *provided however*, that such approval remains subject to the satisfaction of the additional requirements set forth in subsections (b), (c) and (d) of Section 7.4 of the Agreement.

4. Approval of Operator. Pursuant to Section 1.4.1 of the Agreement, Integral Senior Living is hereby approved as the Operator of the Phase One Development; *provided however*, that the form of Operations Agreement to be entered into with the Operator remains subject to the Housing Authority's approval pursuant to Section 1.4.1 of the Agreement.

C. Counterparts

This Operating Memorandum may be executed in counterparts, which when executed by the parties shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Operating Memorandum as of the date first written above.

HOUSING AUTHORITY:

CITY OF MILPITAS HOUSING AUTHORITY

By:_____

Name:_____
Executive Director

ATTEST:

By:_____
Housing Authority Secretary

APPROVED AS TO FORM:

By:_____
Housing Authority Counsel

DEVELOPER:

SOUTH MAIN SENIOR LIFESTYLES, LLC

By:_____
Joseph W. Callahan, Jr.
Managing Member

By:_____
James R. Burns II,
Managing Member

THE WOLFF COMPANY
Since 1949

HA2

COMPANY OVERVIEW

THE WOLFF COMPANY IS A FULLY INTEGRATED, MIDDLE MARKET, REAL ESTATE PRIVATE EQUITY FIRM THAT TRACES ITS LEGACY BACK TO 1949.

The Wolff Company

The Wolff Company ("Wolff") is a fully integrated real estate private equity firm that traces its legacy back to 1949. Wolff has invested in, acquired, and developed high-quality multifamily assets for more than six decades. Wolff is headquartered in Scottsdale, Arizona, and maintains offices in Washington, Massachusetts and California.

Wolff's Track Record

Wolff has a long track record of patiently acquiring and developing proprietarily-sourced multifamily assets and operating them with a view to maximizing investment value. Wolff has invested in more than 22,500 multifamily units and currently manages more than $1.7 billion of discretionary capital. Since 2000, Wolff has made investments in over 100 multifamily assets and has delivered fully realized gross IRRs of nearly 30.0% for its for-rent multifamily investments.[1]

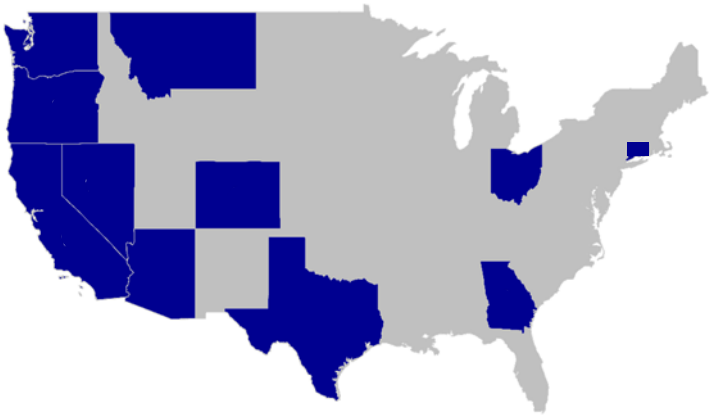
Discretionary Capital Under Management

In 2009, Wolff raised its inaugural Wolff Real Estate Partners, L.P. ("WREP"), a $294-million, closed-ended fund focused on the acquisition and development of multifamily assets in core and secondary markets nationally. WREP is fully invested and is projected to generate on a gross basis approximately a 27% IRR and approximately a 1.7X multiple on invested capital. This translates to an approximate net IRR of 15% to 16% and an approximate net multiple on invested capital of 1.5X. In 2012, Wolff launched Wolff Income Partners, L.P. ("WIP"), a long-dated, multifamily-only, open-ended fund focused on both the acquisition and development of core assets with little to no financial leverage. To-date, WIP has accepted approximately $285 million in capital commitments and an $85 million co-investment. In 2012, Wolff raised Wolff Real Estate Partners II, L.P. ("WREPII"), the $484-million successor to its WREP fund. Similar to WREP, WREPII is a closed-ended fund focused on the acquisition and development of multifamily assets in core and secondary markets nationally. In 2014, Wolff raised Wolff Credit Partners, L.P. ("WCP"), a $233-million, multifamily-only, closed-ended fund focused on making credit and preferred equity investments in multifamily developments and acquisitions nationally.

Wolff's Team

The senior members of The Wolff Company have worked together for an average of 13 years and average more than 20 years of experience. Fritz H. Wolff, The Wolff Company's CEO, has been with the firm for over 20 years. Wolff employs more than 100 executives, investment professionals, analysts and operational staff that manage and control all aspects of the investment and asset management process in-house.

Geographically Diverse Multifamily Platform



Fund Name	Fund Vintage	Total Commitments*
Wolff Real Estate Partners	2009/2010	$330,000,000
Wolff Income Partners	2012	$370,000,000
Wolff Real Estate Partners II	2012/2013	$515,000,000
Wolff Credit Partners	2014	$232,550,000

*Represents total commitments plus estimated co-investments

Contacts

The Wolff Company, LLC
6710 E. Camelback Rd, Suite 100
Scottsdale, AZ 85251
Name: Fritz H. Wolff | CEO
Email: fritz@awolff.com
Telephone: (480) 258-3370

The Wolff Company, LLC
6710 E. Camelback Rd, Suite 100
Scottsdale, AZ 85251
Name: Jay Petkunas | President / COO
Email: jay@awolff.com
Telephone: (480) 258-3370

[1] These results represent realized returns for both Wolff's for-rent multifamily investments and its credit portfolio investments, realized from January 1, 2000 through December 31, 2014. Returns data are based on tax returns, settlement statements, property management reports, and internal reporting schedules. IRRs are calculated on a quarterly basis. These results are based on an internal compilation and have not been audited by an independent third party. Supplemental returns support is available upon request.

The Wolff Company has extensive experience as a developer of high-quality, institutional-grade multifamily communities. With a heavy focus on the western United States, The Wolff Company is currently at various stages in the development process on nearly 5,800 units with more than 4,500 units started in 2014.

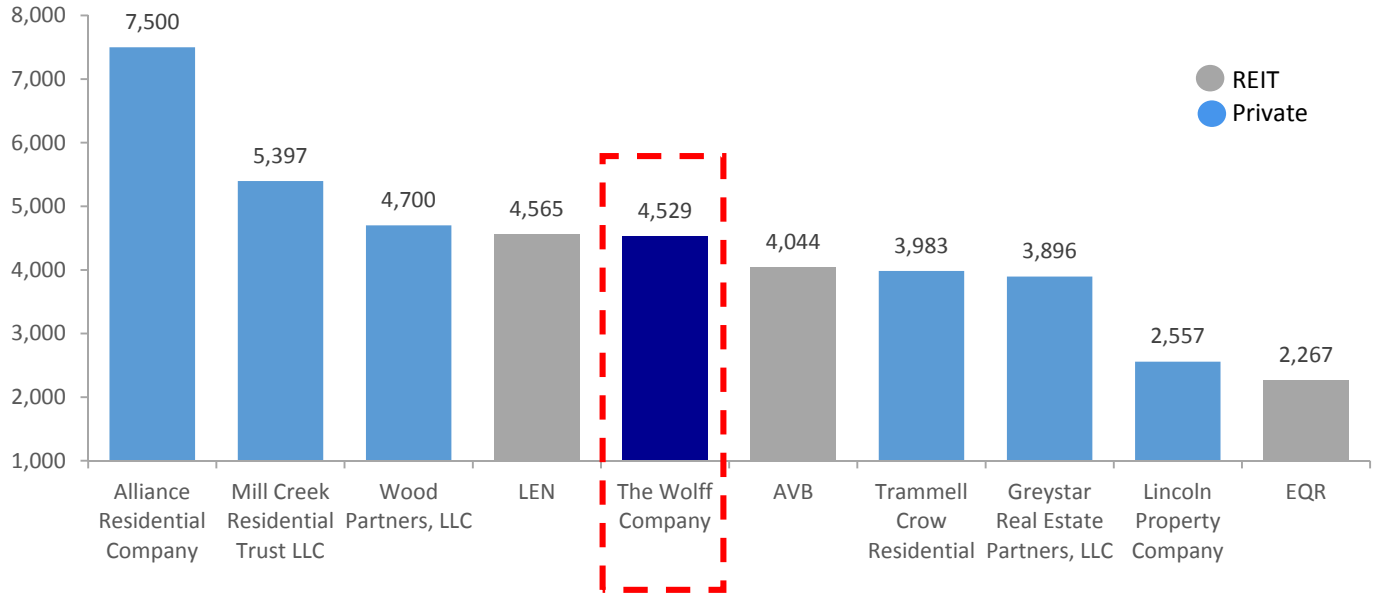
Representative Investments

Property Name: 12th & Olive
Location: Los Angeles, CA
Units: 293

Property Name: Sunset Electric
Location: Seattle, WA
Units: 92

Property Name: Capstone at Vallagio
Location: Englewood, CO
Units: 272

MULTIFAMILY UNITS STARTED IN 2014



Source: National Multifamily Housing Council

Active / Fully-Realized Development Investments

- Big Trout Lodge – 521 Units; Liberty Lake, WA
- Bothell Bailey Farm – 372 Units; Bothell, WA
- Orchard at Hansen Park – 212 Units; Kennewick, WA
- Village on Broadway – 148 Units; Spokane, WA
- Whimsical Pig – 272 Units; Spokane, WA
- Pine Valley Ranch – 256 Units; Spokane, WA
- Island View – 144 Units; Richland, WA
- Badger Mountain – 176 Units; Richland, WA
- Mullan Reserve – 200 Units; Missoula, MT
- Mosaic – 240 Units; Oxnard, CA
- Vallagio – 272 Units; Englewood, CO
- Gunbarrel – 251 Units; Boulder, CO
- 12th & Grand (Grand) – 399 Units; Los Angeles, CA
- Bellevue Gateway – 353 Units; Bellevue, WA
- Sunset Electric – 92 Units; Seattle, WA
- River House I – 216 Units; Spokane, WA
- River House II – 108 Units; Spokane, WA
- Dry Creek – 360 Units; Broomfield, CO
- Columbia City – 244 Units; Seattle, WA
- Platinum Gateway – 399 Units; Anaheim, CA
- Platinum Vista – 386 Units; Anaheim, CA
- West Seattle – 88 Units; Seattle, WA
- Tempo – 235 Units; Oxnard, CA
- 8th & Republican – 208 Units; Seattle, WA
- Range Ranch – 270 Units; Santa Rosa, CA
- Pike Motorworks – 260 Units; Seattle, WA
- 12th & Grand (Olive) – 293 Units; Los Angeles, CA
- West Capitol Commons – 270 Units; Sacramento, CA
- San Jose Site – 200 Units; San Jose, CA

With a focus on thinly traded or overlooked markets, The Wolff Company is actively acquiring multifamily properties across the United States. The Wolff Company has compiled a geographically diverse portfolio of well-performing multifamily assets by targeting markets where assets can be purchased at a discount to replacement cost and areas with significant opportunity to raise rents due to substantial affordability gaps relative to alternative homeownership options in the same location.

Representative Investments

Property Name: Lincoln Place
Location: Loveland, CO
Units: 200

Property Name: Village at Town Center
Location: El Cerrito, CA
Units: 159

Property Name: Oasis Portfolio
Location: Las Vegas, NV
Units: 2,890 (13 Properties)

Active / Fully-Realized Acquisitions

- Sunshine Village – 90 Units; Spokane, WA
- Clocktower – 104 Units; Spokane, WA
- Renaissance at Hobble Creek – 288 Units; Boise, ID
- Boise Seasons – 120 Units; Boise, ID
- Linger Longer Lodge – 90 Units; Spokane, WA
- Lodge at Maple Grove – 154 Units; Boise, ID
- The Trails – 440 Units; Las Vegas, NV
- Crossings – 384 Units; Las Vegas, NV
- Reflections at the Lakes – 326 Units; Las Vegas, NV
- Somerfield at Lakeside – 280 Units; Sacramento, CA
- Sunrise – 85 Units; Spokane, WA
- Oakwood Club – 140 Units; Spokane, WA
- Oakbrook – 304 Units; Sacramento, CA
- Evening Creek – 139 Units; San Diego, CA
- Villas at RPV – 216 Units; Rancho Palos Verdes, CA
- Creek View – 133 Units; San Diego, CA
- Sage at Cupertino – 230 Units; Cupertino, CA
- Kimberly Place I – 212 Units; Monterey, CA
- Monaco South – 216 Units; Denver, CO
- Cypress Creek – 288 Units; Salinas, CA
- Clearwater – 60 Units; Boise, ID
- Ashton – 138 Units; Spokane, WA
- Sierra Vista – 94 Units; Lake Tahoe, CA
- Eagle Rock – 210 Units; Spokane, WA
- Grandridge – 160 Units; Spokane, WA
- Rock Pointe – 88 Units; Eagle, ID
- Lincoln Place – 200 Units; Loveland
- Six 1 Five – 79 Units; Santa Rosa, CA
- Kimberley Place II – 96 Units; Monterey,
- The Blvd – 94 Units; Stamford, CT
- The Edge – 120 Units; Davis, CA
- Big Trout Lodge – 297 Units; Liberty Lake,
- Village at Town Center – 159 Units; El Cerrito, CA
- Waterstone at Murrieta – 420 Units; Murrieta, CA
- Monte Vista – 138 Units; Morgan Hill, CA
- Spinnaker (WIP) – 107 Units; Milford, CT
- Spinnaker (WREP) – 280 Units; Milford, CT
- Broadway Place – 170 Units; Eugene, OR
- Oasis Sierra – 208 Units; Las Vegas, NV
- Chelsea Square – 312 Units; Columbus, OH
- 800 J Lofts – 225 Units; Sacramento, CA
- Oasis Portfolio – 2,890 Units; Las Vegas, NV
- Sequoia Apartments – 112 Units; Redwood City, CA
- Clear Creek Commons – 45 units; Golden, CO

HA3

INTEGRAL SENIOR LIVING

EXPECT THE BEST.

Integral Senior Living, a senior living community management company, is founded on a philosophy that expects the best for residents, employees and owner/investors. ISL specializes in management of CCRC's, senior independent living, assisted living and memory care properties. ISL consistently demonstrates a successful balance for delivering quality senior living environments, fulfilling workplaces and targeted financial returns. For Integral Senior Living, an inherent propensity for sound business practice is nurtured by passion for taking action fueled by a strong history. When nature and nurture meet, great things can happen.

New Ventures

ISL VENTURES

In conjunction with ISL's management expertise, our affiliate, ISL Ventures, LLC is structured to act as a development partner to help plan, validate, capitalize and accelerate your project. Our team has opened over 100 new senior housing developments and has earned an impeccable reputation with years of combined experience developing and operating senior housing communities. ISL Ventures enjoys the nationally-recognized industry track record and relationships necessary to intelligently and efficiently plan, design and structure your project and to attract and secure appropriate debt and equity participants.

Specifically, ISL Ventures strengths include:

» Preparation of sophisticated yet straight forward Penetration Analyses and Competitive Market Assessments;
» Our ability to assemble and team with highly skilled and experienced senior housing-specialized Architects, Designers and Consultants;
» Evaluating market appropriate unit mixes that will optimize operational efficiencies, project lease-up and Net Operating Income;
» Providing programmatic review of architectural design plans;
» Our proprietary project-level pro forma that integrates development and construction budgets with highly-detailed operations projections;
» Entitlement processing and community relations guidance;
» Construction Oversight (but generally not project construction management); and
» Pre-Opening and post-opening marketing and management.

Our business model is simple: In exchange for a promotional interest and a long-term, arms-length management contract, we will utilize the above skills to validate select projects in a manner that facilitates commitments from our capital partners and/or senior housing focused lenders with whom we enjoy strong relationships. Our promotional interests typically are structured such that we participate in project cash flow and capital event net proceeds after investors have received a negotiated preferred return on their equity. We work on a fee for services basis until projects are entitled, capitalized and commenced. At such time, and following execution of project level operating agreements, our fees are contributed back to the partnership. We are not loan or real estate brokers. However, the combination of our project validation and long term management committment is typically an essential aspect of our equity partners' and lenders' interest. Alternatively, we have the ability, along with our capital partners, to purchase projects when the land owner, developer or sponsor prefers an early exit.

Great companies can happen.

IT'S OUR BUSINESS TO MANAGE YOUR SENIOR LIVING PROJECT

Integral Senior Living manages senior living properties - it's our business. Everything about our company is designed to promote the profitability of your senior living community and we do that by prioritizing quality care and service for residents and enriching work environments for our employees.

We treat our third-party managed properties like they are our own with experience and expertise:

» Dedicated Regional Teams
» State-of-the-Art Systems
» Company Culture that Promotes Targeted Goals
» In-House Departments for:
  › Sales and Marketing
  › Accounting and Financial Services
  › Human Resources
  › Resident Care and Licensing
  › Owner Relations and Reporting
» The value to you as a property owner is in our results.

MISSION STATEMENT

ISL is dedicated to the development and operation of senior living communities that create value for residents, employees and owners by providing quality senior care, a fulfilling work environment and targeted financial returns. We are passionate about senior care while providing an empowering environment that offers autonomy and personal growth.

CORE VALUES

Integrity
Teamwork
Expertise
Flexibility
Results

VISION STATEMENT

ISL will grow as large as our values, integrity, teamwork, expertise, flexibility and results will allow. We will listen and respond to the changing needs of our customers, employees, owners and ourselves.

The Integral Senior Living story

In 2012 ISL celebrated it's 10 year anniversary. Over the last 13 years we aspired to create a unique kind of senior living community. Passion for quality senior care was and remains the cornerstone of the ISL philosophy.

ISL's passion for operating quality senior care communities quickly emerged as a better and different story in the industry. Senior living property owners responded.

With the client base established and rapidly growing, the ISL senior management team grew concurrently. At ISL, the company culture is lived every day. Dedicated to honoring commitments to seniors, employees and owners, ISL attracted senior managers with proven track records. An experienced and talented team, groomed and mentored in the largest senior living companies throughout the United States, has been assembled in the disciplines necessary to support client communities, including operations, resident care, marketing, human resources and accounting/finance.

With the ISL team in place, best practices and systems were established to generate targeted results at each managed property.

The ISL story of success is most poignantly demonstrated in case studies of turnarounds and new development projects over recent years.

balanced

ISL recognizes the importance of serving the key stakeholders of each property: residents and family members, employees and owners. A balanced approach promotes service to each audience without sacrificing the interests of another.

CASE STUDY

TO THE RESCUE

In December 2010, a large, mostly Independent Living community in Northern California had been open for approximately 18 months and was 29% occupied and operating at a negative NOI margin. The owners needed relief and decided to bring in Integral Senior Living (ISL) as the operations management company.

There was not a single move-in for about six months prior to our management. As a result, before engaging ISL, the Owner had decided that a move-in motivator would be to offer life time rate locks to prospective residents. We were able to stop this practice soon after taking over management, effectively demonstrating to the Owner the negative, long term implications to revenue, while implementing sales and marketing methods that were more effective in driving traffic and move-in activity, as well as increasing revenue/unit.

In addition to being a large community in a small market, the community opened offering only independent living and memory care services. We quickly identified an opportunity to add assisted living services to drive more traffic and move in's, as well as retain IL residents when their care needs required a move to assisted living.

The final piece was to get the right leadership team in place to effectively lead the charge with the changes in a cohesive and effective manner. Under ISL guidance, the team has evolved into a strong unit that is reflected in the higher quality of services to the residents and greatly improved revenue and expense management.

After one year under ISL management, census had increased by 43 units (a 60% incremental increase) and the community reported a 27% NOI margin. By year end 2014, census had increased to a total of 232 units at 99% occupied with a NOI margin of 50%.

Today the property delivers over $500,000 net operating income each month.

CASE STUDY

A RALLY FOR TARGETED RESULTS

In 2006, ISL took over management of three underperforming properties and a development project all located in Northern California. With the decision to transition the properties to ISL management, a rally for targeted results was immediately launched. Operating expense reduction opportunities were identified and implemented while sales efforts were revamped to drive both census and revenue. Our team led the charge to get all operations in place during the construction of the development project and successfully opened the new community in June of 2007.

Although the buildings went through many changes over the years, one constant remained; key decisions for each property were made by the Leadership and ISL Regional Teams at those buildings. These teams were allowed to implement ideas that would help build and sustain census and revenue. Their knowledge of the competitors, market conditions and professional environment in their market area were the key driving factors guiding decisions. ISL played a critical role supporting the community teams in implementing ideas and giving the guidance and framework necessary to be successful.

ISL's leadership brought a true Sales and Service Culture to these properties. Every team member was made aware of their role in the sales process. Their day to day responsibilities geared toward creating a warm and welcoming environment for anyone who walked through the door. With ISL's guidance and support over the last seven years, these communities consistently reported strong occupancy and NOI margins, thereby significantly driving business value for ownership. In 2013 the communities were sold for $173 million. At the time of the sale, the portfolio reported average occupancy of 90% with an average NOI margin of 43%.

CASE STUDY

IMPLEMENTING CHANGES

A 156-unit assisted living and memory care community was transitioned to ISL management in early 2013 by a group that had just closed on the acquisition. Upon taking over management, opportunities for change were quickly identified and action plans were launched. We identified and implemented changes that were needed to position the community for long term success. The quality improvements were vast and included new community leadership, expense management, census development, employee morale and training, resident care assessments, policies and procedures. The community was re-branded and went through a major re-model which was completed in mid-2014.

ISL successfully repositioned the community from its very negative reputation in the broader community and during our management grew census to 96.2 % occupancy by October 2014 from 80.8% in October 2013. With the ISL systems implemented and dedicated support by each discipline of the ISL regional team, in less than 2 years the community was sold for $60 million at a sub 5 cap rate.

people-oriented

The ISL team is devoted to delivering quality service and care to seniors. From the moment a senior enters an ISL-managed property, they become part of the family. Their well-being and happiness are our priority.

CASE STUDY

RIGHT SIDE OF THE TRACKS

A purpose-built new property located in the Inland Empire of Southern California had consistently experienced lackluster results for more than three years under management by one the largest senior living companies in the country. The property averaged 65% occupancy and disappointing results. The owners needed relief from low financial returns. They decided to bring ISL in as the operations management company.

ISL quickly identified a demotivated team. They did not believe in their product and lacked marketing focus.

Turnaround was initiated by infusing the team with confidence and passion for their product and service to residents.

A marketing focus now consistently results in strong occupancy. That focus also identified opportunity to convert one wing of the property to memory care, which closed the back door to residents seeking higher levels of care.

The property consistently averages 95% occupancy.

CASE STUDY

EXPENSE MANAGEMENT

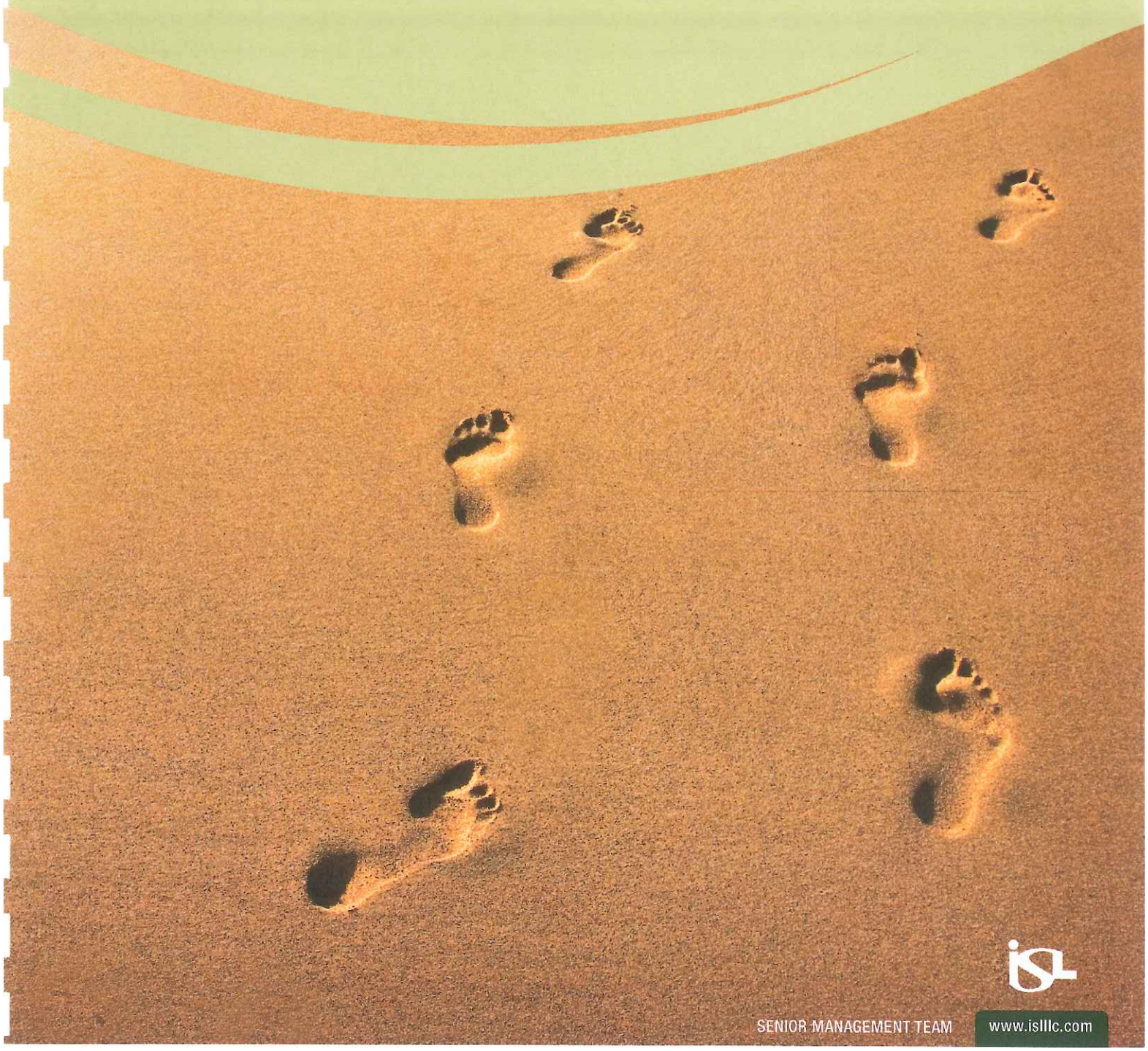
When an 89-unit memory care community in the Pacific Northwest was transitioned to ISL management, the property consistently peaked at 95% occupancy, but still did not meet its debt service. The owners were feeding cash into the operation every month.

From the day the ISL team stepped in, not one more dollar of owner capital was infused. Successful turnaround was accomplished by implementing expense controls. The property now on average earns more than $125,000 net operating income per month.

Since ISL's operation of the property, the owners have refinanced the project twice and realized more than $4.8 million in distribution.

INTEGRAL SENIOR LIVING

SENIOR MANAGEMENT TEAM



Sue Farrow

Founder/Owner of Integral Senior Living

Sue Farrow, Founder/Owner of Integral Senior Living, has established the highly qualified and experienced ISL management team that she entrusts.

With decades of experience in the senior housing industry much of her experience has been in key leadership positions at senior living companies including Aegis Living, Sunrise Assisted Living and Transamerica Senior Living.

Throughout her career, she has taken an active role as a key participant in the development, start up, marketing and operations within senior living. Sue is nationally known for her expertise in all phases of operations and her ability to create senior communities that are a success in the minds of residents, staff and owners alike.

Sue sits as a Board Member for the Assisted Living Federation of America (ALFA). Her education includes a Bachelors Degree in Business Administration from National University.

Tracee DeGrande

President and Chief Financial Officer of Integral Senior Living

Tracee DeGrande, President/Chief Financial Officer of Integral Senior Living, takes it upon herself to share her enthusiasm and love of accounting with everyone on the management team as well as the community leadership teams. She is in charge of ISL's transaction business, and equity funding, as well as corporate finance, operational accounting, contract negotiations, insurance and strategic planning.

Over the course of her career, she has attained more than 26 years of finance experience, with the majority of those years specifically as a CFO in the senior living industry. Her strong industry and professional experience includes tenure at Aegis Living, Regency Pacific, Hillhaven Corporation (now Kindred) and Group Health Cooperative. Tracee has a Bachelor of Arts degree in accounting from Seattle University.

Collette Valentine

Chief Executive Officer and Chief Operating Officer of Integral Senior Living

Collette Valentine, Chief Executive Officer and Chief Operating Officer, joined ISL in October 2010. She possesses experience in both operations and sales and marketing. In her ISL role, she provides day-to-day operations and marketing oversight for all of the communities ISL currently manages as well as overseeing our new developent projects. She encourages an environment in which team members are promoted for their ability to bring resources and ideas to the team.

Prior to joining ISL, Collette was with Merrill Gardens for four and a half years, serving as Vice President of Operations. Prior to this, she was with Atria Senior Living Group. Throughout her eight year career at Atria/ARV, she held a variety of positions including: Vice President and Regional Director of Operations, Regional Sales and Marketing Director, and Executive Director and Community Sales Director at an Atria community. She began her career with Harrah's Entertainment as a Hotel Sales Manager.

She is a graduate of the University of Nevada, Las Vegas with a degree in Business Management.

David Simon

Partner, ISL Ventures

David Simon brings to ISL Ventures his expertise as a real estate professional with nearly 30 years of experience. His passion and extensive knowledge are centered in the senior housing industry; a segment he has worked in for 20 years developing, expanding, acquiring, repositioning, financing, asset-managing and disposing of assisted living, memory care and independent living communities.

David maintains his 20 year relationship with Nicol Investment Company, a privately-held, internally-funded organization with a portfolio that included a diversified collection of property types. Previously his career in real estate included working for master-plan developer Barclay Associates, Inc. and Grubb and Ellis.

David's extensive asset management responsibility over the years has included responsibility for a portfolio of senior housing communities. He has been intimately involved with all aspects of asset management related to operations, marketing, budgeting, human resources, licensing, financing, expansions, entitlements, and legal matters.

Suzanne Foley

Senior Vice President of Human Resources of Integral Senior Living

Suzanne Foley, Senior Vice President of Human Resources, is the pulse behind all areas of human resources and the risk management team for ISL. She brings almost two decades of human resources experience in senior housing to the job everyday and to date has developed policies for more than 100 communities nationwide. She thrives in creating the best working environment for all employees.

Throughout her career, she has developed policies and procedures for 75 assisted living and independent living properties throughout the United States; and provided human resources functions for over 5,000 employees at Sun Healthcare Group. Her talent lies is in her proven success in developing, implementing and conducting human resource best practices and employee training programs. For ISL, she manages worker's compensation claims, employee training, labor relations, insures legal compliance in employee relations and oversees employee benefit programs.

Suzanne is Senior Professional Human Resources (SPHR) certified and holds a Masters Degree in Organizational Management and a Bachelors Degree in Broadcast Journalism from the University of New Mexico.

Vince Limburg

Vice President of Finance and Accounting of Integral Senior Living

Vince Limburg, Vice President of Finance and Accounting, has more than 17 years of senior living management operations experience and over 10 years in restaurant hospitality and management experience.

In his current role he is responsible for the oversight for all aspects of accounting and financial reporting, including the development of budgets and business analytics to provide the communities with decision making tools. He is also responsible for the preparation of new development's proformas.Vince holds a Bachelors Degree in Accounting from Linfield College in Oregon.

Linda Mather

Vice President of Resident Care of Integral Senior Living

Linda Mather, RN, CALN, Vice President of Resident Care, has been a Registered Nurse for 29 years, spending the last 13 years working in the Assisted Living Industry. Linda has served in multiple roles including Assisted Living Director, Executive Director and Sr. Regional Nurse.

Linda began her assisted living career with Assisted Living Concepts and has also worked for Atria, Prestige Senior Living and Merrill Gardens prior to coming to ISL. She is a licensed RCFE administrator in CA and is also a licensed assisted living administrator in AZ

She holds nursing licenses in several states and is also a Certified Assisted Living Nurse. She holds a degree in Nursing from Marshall University in Huntington, WV.

Mandy Hampton

Divisional Vice President of Operations of Integral Senior Living

Mandy Hampton, Divisional Vice President of Operations, has been with ISL since 2005 and presently oversees 13 different communities. Mandy epitomizes the ISL success-story, climbing from Business Office Director to Executive Director at Murrieta Gardens. She was later promoted again to Executive Director at Whittier Place where she increased census from 68% to 90% in only 7 months, leading to her latest promotion to Regional responsibilities.

Prior to joining ISL, Mandy was Controller for a medical software company overseeing their business office, accounting and human resource functions for 6 ½ years.

Mandy currently holds the California RCFE certification.

Jason Engelhorn

Divisional Vice President of Operations

Jason Engelhorn, Divisional Vice President of Operations, has more than 14 years experience working in the senior housing industry.

Prior to becoming a licensed RCFE Administrator over 10 years ago, Jason began his career in the senior housing industry as an Activity Director in a skilled nursing facility and then two hospital-based skilled nursing facilities where he also performed social service and discharge planning duties.Venturing into assisted living administration, Jason found immediate success; increasing the occupancy of his first community from 83 to 100% within his first year. Jason has also been a General Manager for Merrill Gardens and an Executive Director for ARV/Atria where his community was honored as the "Best All Around" community out of its 138 community portfolio.

Jason has a Bachelor of Science Degree in Recreation Administration from California State University, Chico.

Additional Senior Management Team Bio's can be found on our website – www.islllc.com.

Organizational Chart

Collette Valentine
CEO/COO

Sue Farrow
Founder/Owner

Tracee DeGrande
President/CFO

HUMAN RESOURCES

Suzanne Foley
Senior VP Human Resources

Cathy Battles
Human Resources Director

Cynthia Hopkins
Human Resources Director

Katy Warney
Human Resources Director

Brian Nicholson
Human Resources Director

OPERATIONS

Jason Engelhorn
Divisional VP of Operations

Mandy Hampton
Divisional VP of Operations

Mike Zeug
Regional VP of Operations

Rob Allen
Regional Director of Operations

Jacque Geer
Regional VP of Operations

John Gonzales
Regional VP of Operations

ACCOUNTING & CORPORATE SUPPORT STAFF

Vince Limburg
VP of Finance & Accounting

Cassondra Blair
Corporate Services Coordinator

Cindy Li
Assistant Controller

Bob Lebeda
Senior Staff Accountant

Derrica Crossley
Corporate Services Assistant

Denine Myers
Senior Staff Accountant

Julie Stites
Senior Staff Accountant

Becca Maxwell
Receptionist

Gary Llanora
Staff Accountant

Maristela Paul
Staff Accountant

Robin Cochran
Staff Accountant

Erika Arroyo
Accounts Payable Specialist

Juliette Cronk
Accounts Payable Specialist

Yulia Kouprina
Accounts Payable Specialist

Susan Lares
Senior Payroll Specialist

Alyssa Nuno
Payroll Specialist

REGIONAL ASSISTED LIVING

Linda Mather
VP of Resident Care

Armida Wilson
SR Regional Director of Assisted Living

Gregory Walker
Regional Director of Assisted Living

Jan McLennon
Regional Director of Assisted Living

Rachel Christianson
Regional Director of Assisted Living

Susan Safi
Regional Director of Assisted Living

REGIONAL MARKETING

Carrie Delaney
Regional Marketing Director

Christy Van Der Westhuizen
Regional Marketing Director

Dan Hadfield
Regional Marketing Director

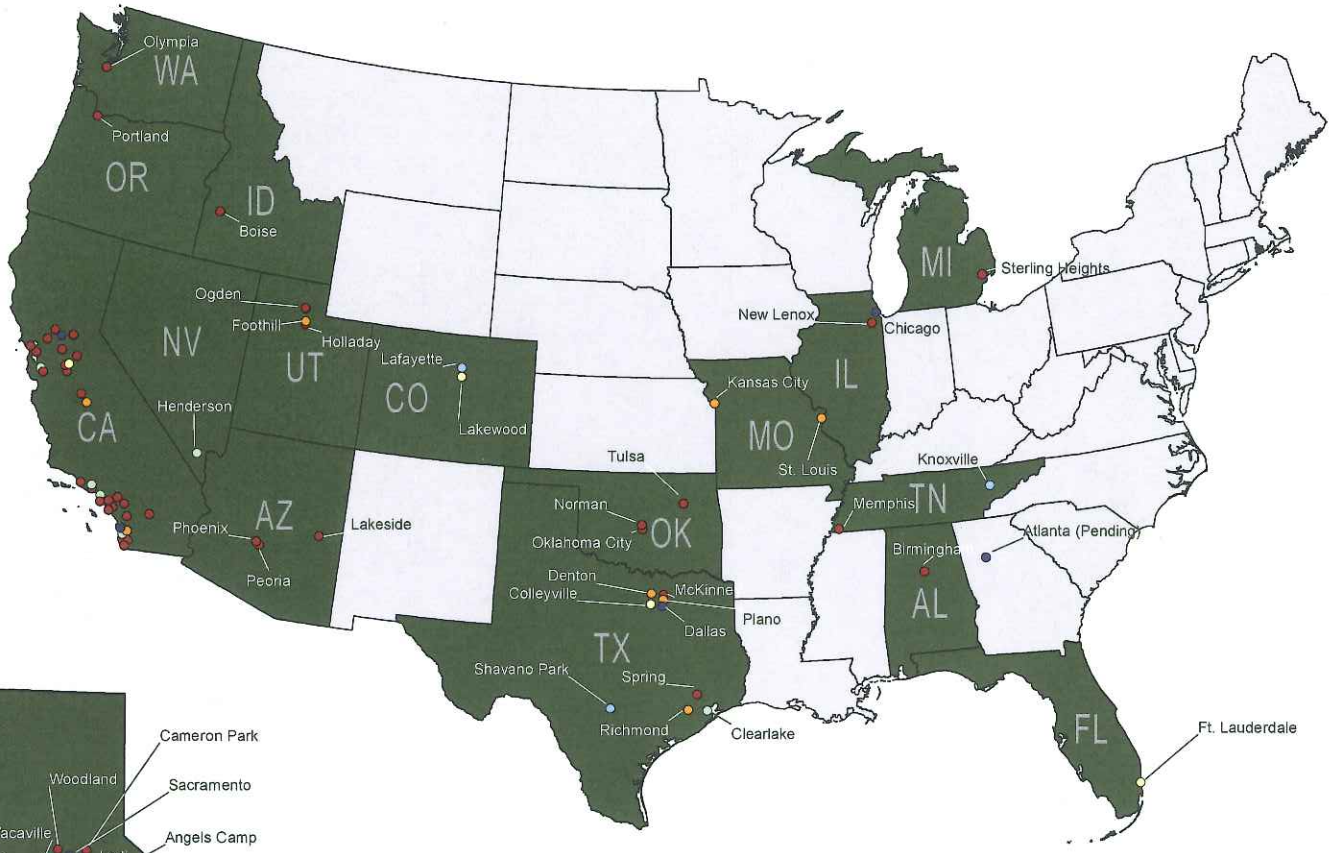
Jeffery Smith
Regional Marketing Director

John Murphey
Regional Marketing Director

Kristen Kohler
Associate Dir. of Corp. Marketing

INTEGRAL SENIOR LIVING

Community Map

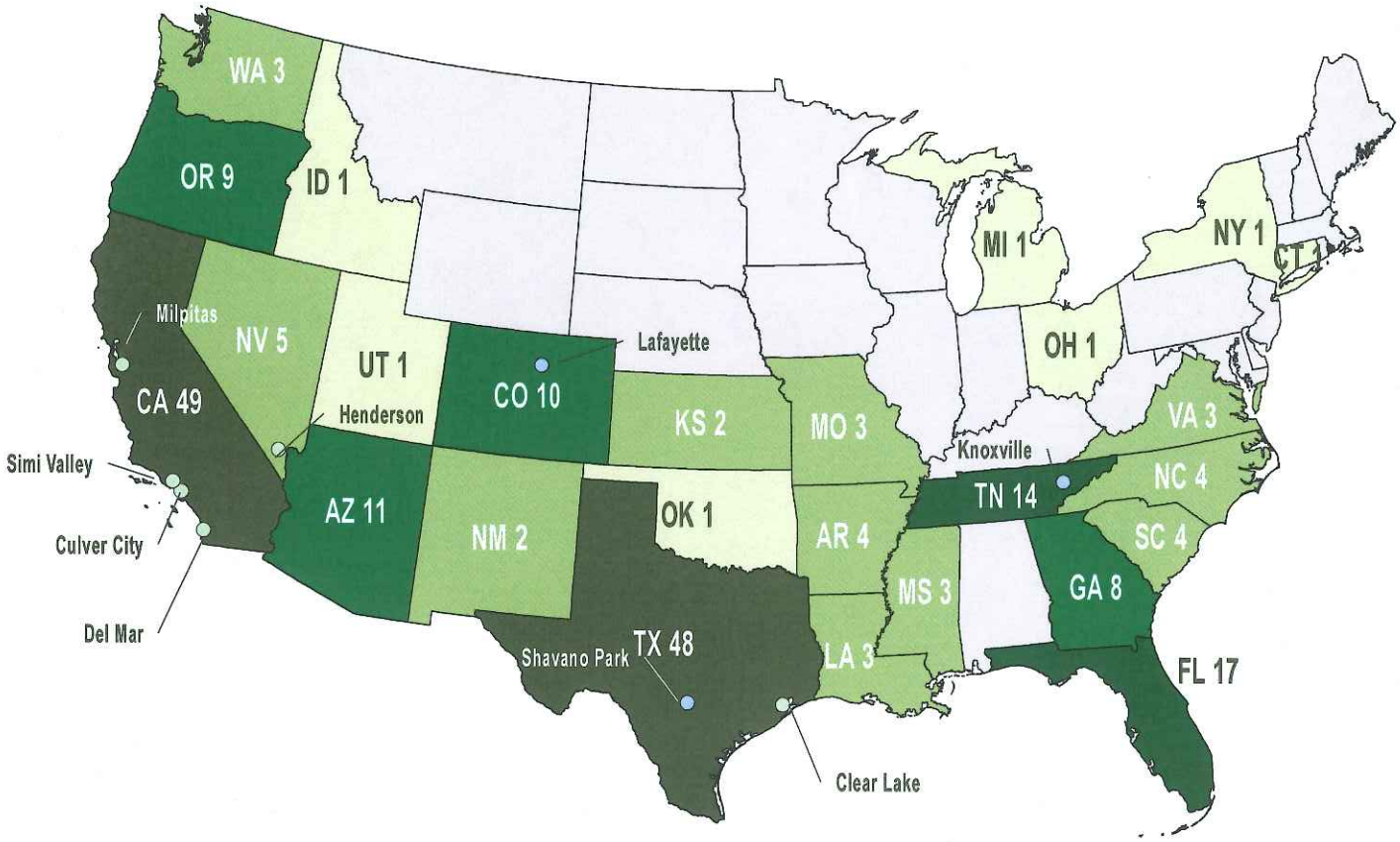


- ISL Managed
- ISL Under Development
- ISL Early Stage Development
- ISL Ventures Under Development
- ISL Ventures Early Stage Development
- Regional Office

www.islllc.com

ISL Ventures

Project Map



Total Assessed: 210

Total Under Development: 3 (1.5% of Assessed)
Total in Early Development: 6 (3% of Assessed)

ISL Ventures Under Development
ISL Ventures Early Stage Development

INTEGRAL SENIOR LIVING

MEMBERSHIPS, AWARDS, & ACHIEVEMENTS

Over the years, Integral Senior Living and its leadership have received numerous awards and recognition for excellence. Examples of recent awards and other notable occurrences summarized below.

2014

- ISL employee received the California Assisted Living Association (CALA) 2013 "Excellence in Service" award for Outstanding Executive Director for Northern California.
- Collette Valentine, Chief Executive Officer, was appointed to the California Assisted Living Association Board of Directors.

2013

- ISL employee received the California Assisted Living Association (CALA) 2013 "Excellence in Service" award for Outstanding Department Director for Northern California.

2012

- Assisted Living Federation of America (ALFA) ranked Integral Senior Living as the 17th largest senior housing operator in the nation.
- Sue Farrow, Owner, was named a semi-finalist for the Ernst & Young Entrepreneur of the Year.

2011

- American Senior Housing Association recognized Integral Senior Living as having the greatest percentage increase in units managed between 2010 and 2011 (77%), adding 2,130 units to its portfolio.

- ISL employees received the California Assisted Living Association (CALA) 2011 "Excellence in Service" awards for Outstanding Team Member and Outstanding Executive Director for Southern California.

2010

- ISL ranked 1,552 in Inc. magazine's fourth annual "Inc. 5000" list of the Nation's fastest growing private companies. The list represents a comprehensive look at the most important segment of the economy-America's independent-minded entrepreneurs. The " 2010 Inc. 5000" list ranks according to percentage revenue growth when comparing 2006 to 2009.

- ISL received two awards from the National Mature Media Awards. The awards recognize ISL's exceptional work on behalf of its marketing/advertising campaign and publications. The National Mature Media Awards is the Nation's largest awards program that annually recognizes the best marketing, communications, educational materials and programs for adult's age 50 and older.

- Integral Senior Living, was named to the California Assisted Living association Board of Directors.

- Stephanie Templeton, Executive Director of Stratford of Phoenix, an ISL operated assisted living community in Phoenix, Arizona, was elected Chairman of the Board of Directors and Executive Committee for the Arizona Assisted Living Federation of America.

- Sue Farrow, Owner, was recognized by the Assisted Living Federation of America for being among the most visionary, inspiring and effective leaders.

- ALFA's Assisted Living Executive Magazine, March/April issue ranked ISL as the 24th largest assisted living operator. ISL's units under management increased by 24% from 2009 to 2010.
- Three ISL employees received the California Assisted Living Association (CALA) 2010 "Excellence in Service" award. CALA only issues six awards each year with ISL employees receiving half of the six possible awards.
- ISL ranks as the fourth largest assisted living provider in California by CALA (based on 2010 CALA Membership Directory-number of buildings operated by parent companies).
- ISL was honored with national recognition by winning the Assisted Living Federation of America's (ALFA) 2010 "Best of the Best" award for its Dining by Design program. ALFA identified the Company's extraordinary work on behalf of its innovative program.

2009

- The Assisted Living Federation of America (ALFA) Board of Directors appointed Sue Farrow, Owner, for a two-year term effective May 1, 2009. ALFA is the largest national association exclusively dedicated to professionally operated assisted living communities for seniors.
- Executive Director of Mountain Ridge, an ISL operated assisted living community in community in Ogden, Utah, was elected Secretary of the Executive Committee and member of the Board of Directors for the Utah Assisted Living Federation of America (UALA).

2008

- The 50-plus Housing Council Board, a special interest council of the Building Industry Association of Southern California, named Sue Farrow, Owner, 2008 SAGE Person of the Year. The SAGE Awards pay homage to the best projects, people and programs in the 50-plus housing sector and related services. The awards recognize innovative and noteworthy people and accomplishments that demonstrate the passionate commitment that improves the lives of those who are 50 years of age.

ASSISTED LIVING SERVICES OVERVIEW

As fully licensed Assisted Living providers, our communities are governed and monitored by the respective states regulatory agencies and adhere to all statutes and regulations.

Services Provided/The Continuum of Care:

As a provider of both medically and socially focused care, it is incumbent upon us to collaborate and coordinate care with a variety of service providers in order to achieve the optimal outcome for our mutual residents. In addition to our own 24 hour staff, in both Memory Care and Assisted Living we utilize a number of different resources in order to properly meet both the expected and unexpected needs of our residents.

Assisted Living:

Based on the needs of the residents, we are able to offer a wide range of services both in-house and through collaboration with outside providers.

In-House services (providers coming in-house) may include:

- In house Physician visits including primary and general practitioners, Podiatrists and Physicians who specialize in pain management.
- Hospice Care which includes skilled Nursing visits, CNA visits, Medical Social Workers (MSW's), Chaplains and other ancillary and support personnel.
- Home Health including skilled Nursing visits, psychiatric Nurse visits and programming, Physical Therapy, Occupational Therapy, Speech Therapy, CNA's and MSW's.

Outside services (providers who must be seen off property due to the extent of care required) may include:

- Rehabilitation services
- Wound care clinics
- Specialty Physician's

Generations:

Our memory care program is notably called "Generations". As with Assisted Living we utilize the services of a variety of ancillary providers in order to assure the best care possible for those with memory impairment. In addition to the providers listed above, for our Generations program we also rely upon the following agencies for their expertise:

- Alzheimer's Association
- Walk Away Program
- American Society on Aging
- A variety of in and out of house support groups

Due to the vulnerable population residing in Generations, our communities utilize some safety measures above and beyond what is required in assisted living. These include but may not be limited to the following:

Beginning with the assessment process, staff works with a number of tools to best assure the appropriateness of potential residents. This includes a review of the initial Physician's report, hospital/rehab or Skilled Nursing Center records, conversations with staff and family members, Mini Mental State Exam (MMSE), a Pre-placement appraisal where applicable, medication reviews, a functional assessment and resident interviews and observation.

In addition to the above precautions there are also additional physical plant safety measures such as:

- Delayed egress
- Alarmed doors inside the community
- Alarmed doors leading from enclosed outdoor activity areas (secured perimeter)

Staffing and Training:

Assisted Living:

In order to meet the complex needs of our residents, we hire a variety of both licensed and unlicensed support personnel. They include Nurses, CNA's, Administration, dietary and kitchen staff, bookkeeping and maintenance staff. We have staff on duty 24 hours a day 7 days a week. The number of staff on duty at any given time is strictly dependent on the needs and acuity of the residents which allows us to be very flexible and responsive while assuring the ratio of care staff to residents is manageable and directly related to the needs of the residents.

All direct care staff go through rigorous training prior to being allowed to provide direct care. This training includes but is not limited to the following:

- Resident Rights
- Resident Abuse and mandated reporting
- Psychosocial needs of the elderly
- Emergency protocols
- Change of condition
- Medication assistance which is a combination of 16 hours of didactic and hands on training
- The aging process and special needs of the elderly
- Techniques of personal care service
- CPR and First Aid
- Transfers and lifting
- End of life care

In addition to the training outlined above, all direct care staff is trained by our nurses in emergency response protocols and monitoring for changes of condition for both acute and chronic illnesses within the scope of their practice and regulatory guidelines.

In order to assure the highest training standards, we also require our assisted living staff to complete the dementia training requirements at time of hire and annually thereafter.

Annually all direct care staff is required to have a minimum of 4 hours which we far exceed by holding in-service training at least monthly.

Generations:

In addition to all of the requirements above, our Generations care staff must complete additional training hours based on specific state regulations. This training includes but is not limited to the following:

- Communication techniques
- Promoting resident dignity
- Common behaviors
- Use of medications in dementia care
- Therapeutic interventions
- Assisting with ADL's
- Activities and programming
- End of life issues and care

Our memory care staff also goes through the communities Generations training which is an in-depth program developed in conjunction with a certified expert in the field of dementia care. This program takes the staff through the etiology and pathophysiology of dementia and the different levels of dementia. It further trains staff on the power of activities, environment and the underlying person centered care that makes our program unique.

Transitions:

Another crucial element in the continuum of care is the Transitions Program which can be offered in a community. This program is specifically designed for residents in the early stages of dementia or even late stages of mild cognitive impairment (MCI) and is intended to create a bridge from assisted living to memory care. These residents live in assisted living while spending the majority of their day participating in the Transitions program. This begins just after breakfast and typically would end around the evening meal. These residents spend most of their late morning and afternoon participating in small, meaningful staff directed activities geared specifically for their cognitive and physical abilities. These activities are a combination of cognitive, physical and psychosocial. An activity program of this caliber should be regarded as a disease modifying intervention, since a premium activity program can actually replace a pharmacological intervention for many residents with memory impairments. Current research suggests the participants in a specially designed program may even be able to extend the length of time residing in an Assisted Living community by as much as 1-2 years.

The final piece in the continuum of care for our mutual residents is the community's relationship with local hospitals, Skilled Nursing centers and Rehabilitation centers. These relationships are crucial as they allow for a comprehensive array of health services spanning many levels of intensity of care. While as a fully licensed assisted living and memory care community our staff works to provide necessary care to a variety of medically complex residents in house, a close partnership with our more acute care providers has numerous benefits for our residents.

A few benefits of such a partnership are:

- The ability to closely follow mutual residents providing for ease of transition thus minimizing the risk of transfer trauma while promoting optimal outcomes.
- Close collaboration between Physicians, Discharge Planners and community staff
- Continuity of care
- Consistent and improved communication leading to less risk of re- hospitalization and fewer trips to the emergency room

ISL MARKETING OVERVIEW

Integral Senior Living supports each community by designating a specific support team to each community. The team is chosen by the needs for a community as we believe each person has specific strengths that can be an asset to different areas. This team consists of a Regional Vice President (RVP), Regional Assisted Living Director (RALD), Regional Marketing Director (RMD), and a Regional Human Resource Director (HR). Our philosophy is that by designating a specific team, we can provide ongoing support without interruption. We believe being present in a community is the best support we can provide and given our regional structure we are able to provide numerous visits to a community throughout the month. After each visit made, an overview of that visit is distributed to the community as well as the regional team to ensure there is constant communication.

- **Regional Vice President/Regional Director of Operations (RVP/RDO)**: The role of the RVP is to work with the Executive Director to oversee all operational aspects of the community, ensuring census goals are achieved and NOI is maximized.
- **Regional Assisted Living Director**: The role of the RALD is to oversee the care needs within the community. They act as a support to the entire care department; ensure that state licensing requirements are being met, policy & procedures are in place, and that we are maximizing our care fees through resident assessments. The RALD is either a RN or a LVN.
- **Regional Marketing Director**: The role of the RMD is to provide support in all areas marketing related. The RMD works primarily with the Marketing Director to complete marketing plans, advertising schedules, outside sales plans, and proper database management. The RMD provides trainings such as First Impressions, Concierge Training, Tour Training, and other trainings that an individual community requires.
- **Regional Human Resources**: HR wears many hats in each community. They provide employee relations support, trainings that are required through state licensing, and benefits support.

The Regional Marketing Director's focus is to support all of the marketing efforts in the community. The RMD works directly with the Executive Director and Community Marketing Director to reach and maintain a high occupancy through developing a marketing plan. The marketing plan is considered a living document that is reviewed consistently to guarantee the continued growth of the community in both census and revenue. The RMD makes certain to perfect any area of the building that could potentially lead to poor first impressions or a lost sale. This can be done through trainings, role playing, shadowing, and performing the job functions for the Marketing Director to simulate. Professional referral relationships are a large part of the referrals that we want to receive at the community. It is the RMD's role to work with the CMD to provide support to develop and continue the professional relationship with the proper professional sources. As there are specific guidelines when putting costs towards advertising campaigns and direct mail pieces, the RMD, with the team, develops the proper message we want to deliver to the public. A consistent and detailed marketing plan that is followed at the community level by the entire management team leads to great success.

Pre-Leasing Efforts:

Once the management agreement is signed the pre-leasing marketing efforts go into effect. Those are as follows:

- **Determining a pre-leasing marketing budget:** Allocate funds to specific areas in the pre-leasing budget to developing a brand prior to opening.
- **Develop brand:** When developing a brand we ask ourselves these questions; What is the need for the area? What will help us stand out from our competition? How do we want to position ourselves in the market? In each location there may be additional questions that will be specific to that market that we will want to answer prior to determining our name and logo. Developing a brand includes determining the community name, developing a logo, and building the collateral package.
- **Competitive Shops:** A community will not be successful if they are not aware of what their competitors are doing. How are they selling against us? What are their points of difference? A specific format for the Competitive Marketing Analysis (CMA) is used so we can compare all competitors next to each other. The CMA focuses on prices, square footage, occupancy, care fees and what is provided with these fees. Throughout the entire pre-leasing process, this should be completed on an ongoing basis to ensure we are constantly aware of our position within the market.
- **Marketing Plan:** A detailed marketing plan is developed to cover the following areas:
    - o Pre-Leasing Events: Dates and types of events are determined to create awareness of the new community; we want to always be top of mind with the public. Examples of events we do prior to opening are:
        - Dusty Shoes/Hard Hat Event: This style of event is done when the community is still in the construction phase. It creates a picture of what is to come by using design boards to show the style of the community, renderings, and floor plans. This event has a fun twist as guests are given hard hats to walk the community and we have a time for questions to be answered.
        - Luncheons & Informational Seminars: What is important to prospects is that they can touch and feel the project, and one way of doing this is by hosting lunch and learns. During these luncheons, there is an opportunity for food to be tasted that is indicative of what they would see in the community. During these luncheons we will also do an informational presentation.
        - VIP Open House: Gaining excitement from city officials and key people in the area is one way to ensure support and word of mouth of the community. Once the building is complete, but prior to receiving our certificate of occupancy, a VIP Open House is conducted. This event is an opportunity for guests to tour the finished community, receive recognition from the Chamber of Commerce, and obtain press presence.
        - VIP Open House for Public: As we have built a database prior to this event, we invite everyone to our open house. We will also do a direct mail piece to a targeted demographic to increase attendance. Creating a theme for the event makes it more enticing and exciting. Themes that have been successful are a wine tour, 50's style event, car show, etc.
- **Direct Mail:** In order to have a successful direct mail campaign there must be at least 3 drops, all containing the same message but possibly a different call to action. When determining who to target, we take into account the community's price point. We then detail the drop by age, income, and zip code range. A tracking number is added to the pieces to determine the success.
- **Advertising:** This is a continued way to brand the community and to also have a presence in the local market. Initially we use a third party company to help determine the best publications for the area and to also ensure we receive the best possible pricing. As with the direct mail piece, we use a similar campaign and change out the call to action for a 4-6 month period. This helps brand the community so when our advertisement is noticed the subscriber immediately relates the piece to the community. A tracking number is added to the advertising to measure its success.

- **Outside Sales:** Once an Executive Director (ED) and Marketing Director (CMD) are in place (ED comes on first) then an outside sales plan is developed. We start with a 15 mile radius then expand accordingly while developing relationships within the market. The initial goal of outside sales is to educate the professionals about the community. Scheduling lunches, educational seminars, and cold calling is a constant effort. As there is nothing to tour initially, using a laptop that has virtual tour capabilities and renderings is a great way to see what is to come. We work with the team to join networking and professional organizations in the local area. Important people we look to target are:
    - Local Physician Offices
    - Hospitals
    - Skilled Nursing & Rehab Centers
    - Senior Centers
    - Senior Apartments
    - Local Senior Organizations
    - Local Congregations

- **Press Releases:** We work with a third party consultant who assists with our press releases. Initially submitting press releases about the community and who we are is important. As time continues, we submit press releases that are educational, focusing on the founder's club, new residents, and invitations to events.
- **Pre-Leasing Marketing Office:** This comes in all forms such as a trailer, model completed, or office that is local to the site. The office will house both Executive Director and Marketing Director up until the community is completed. Office should contain renderings, design board, virtual tour (if possible), and all developed collateral pieces. Ideal situation would be to have a discovery area located in the marketing office that is free of an office feeling such as computers, printers, etc. This is where the CMD can do proper discovery, digging deeper into the prospects needs, and developing a relationship.

After Community Opening Marketing Efforts

Once the community has opened its doors, the pre-leasing marketing efforts continue but they are now more specific in regards to events, professional relationships, and offerings at the community.

- **Marketing Plan:** The marketing plan consists of multiple areas for each quarter. The specific titles for each area are:

  Annual Calendar: This is a quick at a glance calendar for the entire year. This should be used at the weekly marketing meetings to make sure pre-planning is taking place.

  Census: It is important for the marketing director to understand where their current occupancy is in relation to the budgeted numbers.

  Outside Sales: Focuses on who the top targeted professionals are that quarter. Important that outside sales is not limited to these only, but this specific professional list should be targeted weekly with specific objectives.

  Quarterly Events: This takes the annual calendar for a specific quarter delving into a specific quarter with more detail such as: Who is our target audience? What is our budget? What are our deadlines?

  Media: Detailed description on all paid media publications we are currently advertising in. This also gives deadlines for artwork and cost per advertisement.

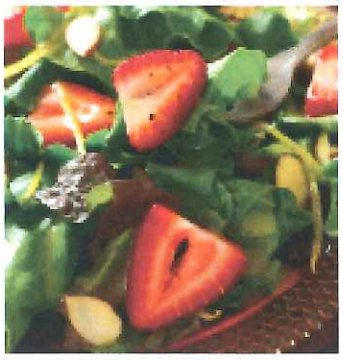
  Press Releases: Press releases need to be completed in advance and sometimes take multiple attempts with publications to be picked up. This part of the marketing plan is given to our consultant so she can develop relationships and also stay on top of upcoming events.

- **Mystery Shops:** Using an outside source to give us a perspective from the prospects view is crucial in the marketing process. We use a third party company to perform mystery shops on both the community and competitors. This is done at least twice a year and can increase depending on the need for each individual community. A specific format is used for each shop and the same shopper completes for both community and competitor, thus helping maintain a consistent view point.
- **Competitive Shops:** These continue to be important after the community opens for many of the same reasons as during pre-leasing. It is important for the Executive Director and Marketing Director to visit the competitors quarterly as well as update their Competitive Marketing Analysis twice a year. The RMD ensures these are updated every March and August. They are done in March because many rates get increased at the beginning of the year: Has this affected occupancy? Have they been able to maintain these rates? They are done in August because we are getting ready to budget for the upcoming year: Are we able to push rates and by how much? How would our increased rates be compared to our competitors?
- **Press Releases:** PR can be expanded upon once the doors have opened. We now have a large number of residents that have personal stories that can be fascinating to the public. We also are able to expand on the events that are offered at the community. This is a specific tab within the marketing plan as this is part of the formula for keeping our community top of mind at all times.
- **Events:** As mentioned above we are now able to expand on our styles of events that can be held within the community. Seeking out professional sources that need a space to host meetings, offering a monthly marketing event that invites our database, families, and public into the community, and professional events that provide us the opportunity for them to tour the community.

DINING BY *design*

Award-Winning Dining Program

Dining by Design received Assisted Living Federation of America's (ALFA) 2010 prestigious "Best of the Best" award for the innovative dining program.



Integral Senior Living understands that social interaction, eating habits and overall well-being are enhanced by a dining experience that is filled with good food, good conversation and an inviting atmosphere. With this in mind, Integral Senior Living developed Dining by Design.

Resident input to Dining by Design has been positive. From anytime dining, to signature dishes served with well-rounded food choices, to upgraded printed materials and customer service, residents are enjoying the Dining by Design program.

Integral Senior Living is dedicated to refining aspects of resident lifestyles and understands that social interaction, nutrition and overall well-being are affected by a satisfying dining experience amongst residents, families and their extended network of caregivers.

INTEGRAL SENIOR LIVING & ISL VENTURES

New Development Projects

The Integral Senior Living senior management team boasts extensive experience in new development projects, totaling more than 100 properties.

Integral Senior Living/ISL Ventures

Early Stage Development

Culver City, California (ISLV)
Del Mar, California (ISLV)
Milpitas, California (ISLV)
Simi Valley, California (ISLV)
Henderson, Nevada (ISLV)
Houston, Texas (ISLV)
Oakdale, California
Lakewood, Colorado
Ft Lauderdale, Florida
Colleyville, Texas

Under Development

Lafayette, Colorado (ISLV)
Knoxville, Tennessee (ISLV)
San Antonio, Texas (ISLV)
Escondido, California - 2 properties
Fresno, California
Oceanside, California
Rancho Santa Fe, California
Kansas City, Missouri
St Louis, Missouri
Denton, Texas
Plano, Texas
Richmond, Texas
Shavano Park, Texas
Foothill, Utah

INTEGRAL SENIOR LIVING & ISL VENTURES

New Development Projects

Open and ISL Managed

Costa Mesa, California
Santee, California
Torrance, California
Portland, Oregon
McKinney, TX
Holladay, Utah

ISL Opened and Previously Managed

Belton, Texas
Copperas Cove, Texas
Hewitt, Texas
Carmichael, California
Lafayette, California
Longmont, Colorado

ISL Senior Managment Experience

Camlu Retirement Apartments

Ft. Smith, Arkansas
Austin, Texas
El Paso, Texas
Kerrville, Texas
San Antonio, Texas
San Marcos, Texas

Sunrise Assisted Living

Bellevue, Washington
Bonita, California
Carlsbad, California
Danville, California
Denver, Colorado – 2 properties
Fresno, California
La Jolla, California
Mission Viejo, California
Oakland, California
Petaluma, California
Seal Beach, California
Studio City, California
Woodland Hills, California

INTEGRAL SENIOR LIVING & ISL VENTURES

New Development Projects

ARV Assisted Living/Atria Senior Living

Irvine, California
Stockton, California
Las Vegas, Nevada – 3 properties
Reno, Nevada
Albuquerque, New Mexico
New York, New York

Aegis Assisted Living

Alameda, California
Aptos, California
Carmichael, California
Chino Hills, California
Concord, California
Corte Madera, California
Dana Point, California
Escondido, California
Fremont, California
Fremont (Aegis Gardens), California
Granada Hills, California
Laguna Niguel, California
Moraga, California
Napa, California
Oceanside, California
Pleasant Hill, California
San Francisco, California
San Rafael, California
Santa Rosa, California
Ventura, California
Las Vegas, Nevada
Bothell, Washington
Edmonds, Washington
Issaquah, Washington
Kent, Washington
Kirkland, Washington
Lynnwood, Washington
Northgate (Seattle), Washington
Redmond, Washington
Shoreline, Washington - 2 properties
Totem Lake, Washington

INTEGRAL SENIOR LIVING & ISL VENTURES

New Development Projects

Sun Healthcare AL—Sunbridge

13 properties in:
Washington
Georgia
Nevada
California
Texas
Kansas
Colorado
Minnesota

Conservatory Senior Living

Keller, Texas
Plano, Texas
Dallas, Texas
Houston, Texas

Capital Senior Living

Mesquite, Texas
Plano, Texas
Pantego, Texas

Merrill Gardens

San Diego, California
Henderson, Nevada

Life Care Services

Austin, Texas

ISL Portfolio Overview

Community Name	City	State	Type of Community (IL, AL, MC, NC, CCRC - EF, CCRC - Rental)	Total Units	IL Units	AL Units	MC Units
Arbor Senior Living	Lodi	CA	IL	96	96	0	0
Casa Aldea	San Diego	CA	Senior Apts	120	120	0	0
Cedar Creek	Madera	CA	IL/AL/MC	112	44	56	12
Claremont Place	Claremont	CA	AL/MC	76	0	46	30
Clayton Oaks	Richmond	TX	AL/MC	98	0	73	25
Cottonwood Place	Holladay	UT	AL/MC	120	0	88	32
Courtyard Park	Portland	OR	AL/MC	85	0	73	12
Courtyard Plaza	Portland	OR	IL	199	199	0	0
Cranbrook of Tustin	Tustin	CA	AL/MC	84	0	66	18
Cypress Place AL	Ventura	CA	AL	76	0	48	28
Cypress Place IL	Ventura	CA	IL	76	76	0	0
Denton	Denton (under construction)	TX	AL/MC	107	0	75	32
Felicita	Escondido (under construction)	CA	AL/MC	87	0	49	38
Foothill Village	Angels Camp	CA	IL/AL/MC	65	49	16	0
Garden Courte	Olympia	WA	MC	60	0	0	60
Kingston Bay	Fresno (under construction)	CA	AL/MC	96	0	72	24
Lantern Crest	Santee	CA	AL/MC	80	0	44	36
Lantern Crest II	Santee	CA	IL/AL	102	83	19	0
Meadowbrook	Agoura	CA	AL/MC	156	0	117	39

ISL Portfolio Overview

Community Name	City	State	Type of Community (IL, AL, MC, NC, CCRC - EF, CCRC - Rental)	Total Units	IL Units	AL Units	MC Units
Mission Hills at Rancho Mirage	Rancho Mirage	CA	AL/MC	124	0	65	59
Montecito Peoria	Peoria	AZ	IL/AL	195	107	88	0
Mountain Ridge	Ogden	UT	AL/MC	108	0	80	28
Murrieta Gardens	Murrieta	CA	AL/MC	63	0	48	15
The Cottages at New Lenox	New Lenox	IL	AL/MC	80	0	18	62
Overland Court Senior Living	Boise	ID	AL/MC	115	0	61	54
Palm Gardens	Woodland	CA	AL/MC	65	0	49	16
Paramount Court Senior Living	Turlock	CA	AL/MC	81	0	62	19
Paramount House Senior Living	Vacaville	CA	AL/MC	81	0	66	15
Plano	Plano (under construction)	TX	AL	92	0	92	0
Ponte Palmero Retirement Village	Cameron Park	CA	IL/AL/MC	233	61	137	35
Rambling Oaks Assisted Living	Norman	OK	AL	70	0	70	0
Rambling Oaks Courtyard	Oklahoma City	OK	AL/MC	63	0	43	20
Regency of Evergreen Valley	San Jose	CA	AL/MC	100	0	80	20
Shavano Park	San Antonio (under construction)	TX	AL/MC	68	0	40	28
Solterra	Lakeside	AZ	IL	54	54	0	0
Solterra TWO	Lakeside	AZ	AL/MC	58	0	50	8
Spring Creek Village	Spring	TX	AL/MC	108	0	60	48
Stratford at Beyer Park	Modesto	CA	AL/MC	87	0	73	14

ISL Portfolio Overview

Community Name	City	State	Type of Community (IL, AL, MC, NC, CCRC - EF, CCRC - Rental)	Total Units	IL Units	AL Units	MC Units
Stratford at Phoenix	Phoenix	AZ	AL/MC	148	0	116	32
The Arbors	San Diego	CA	AL/MC	87	0	56	31
The Point at Rockridge	Oakland	CA	AL/MC	146	0	117	29
The Village at Stonebridge	McKinney	TX	AL/MC	107	0	75	32
Town Village at Sterling Heights	Sterling Heights	MI	IL	221	221	0	0
Town Village of Audobon Park	Memphis	TN	IL	175	175	0	0
Town Village of Vestavia Hills	Birmingham	AL	IL	221	221	0	0
Town Village at Tulsa	Tulsa	OK	IL	198	198	0	0
Villa Bonita	Chula Vista	CA	AL/MC	127	0	112	15
Village at Stonebridge	McKinney	TX	AL/MC	107	0	75	32
Vista Del Lago	Escondido (under construction)	CA	MC	52	0	0	52
Vista Village	Vista	CA	AL/MC	90	0	73	17
Vivante	Costa Mesa	CA	AL/MC	185	0	145	40
Welbrook - Arlington	Riverside	CA	AL/MC	202	202	0	0
Welbrook - South Bay	Torrence	CA	AL/MC	109	0	70	39
Whittier Place	Whittier	CA	AL/MC	90	0	58	32
Windchime of Marin	Kentfield	CA	MC	36	0	0	36
PORTFOLIO TOTALS	**56**			**6,113**	**1,932**	**2,967**	**1,214**
Percentage Allocation by Service Type					**32%**	**49%**	**20%**

Integral Senior Living Management

List of Attachments for Public Hearing No. 01

– Urgency Ordinance No. 240.3 – Water Use Restriction

Attachments:

1-A	Resolution Approving Citywide Water Conservation Plan
1-B	Urgency Ordinance No. 240.3 – Supplemental Water Use Restriction
1-C	CIP 7126 – Water Conservation Program Sheet
1-D	Memorandum – Water Rationing Program Comparison
1-E	State Water Resources Control Board - Resolution 2015-0013
1-F	State Water Resources Control Board - Resolution 2015-0032
1-G	2 Letters: Summitpointe Golf Club and Spring Valley Golf Course
1-H	Budget Change Form (BCF)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A WATER CONSERVATION PLAN DUE TO STATE WATER SHORTAGE, APPROVING A BUDGET APPRORPIATION TO IMPLEMENT THE WATER CONSERVATION PLAN, AND DENYING REQUESTS FOR WATER SERVICES TO HIILSIDE GOLF COURSES

WHEREAS, on June 7, 2011, the City Council adopted Resolution No. 8093, "A Resolution Adopting The 2010 Urban Water Management Plan and Establishing the 2020 Per Capita Daily Water Use Target" (the "UWMP"); and

WHEREAS, on January 17, 2014, the Governor issued a Proclamation declaring a State of Emergency due to severe drought conditions; and

WHEREAS, on January 28, 2014, the Santa Clara Valley Water District, one of the City's water suppliers, declared a water supply shortage and requested ten percent (10%) conservation; and

WHEREAS, on January 31, 2014, the San Francisco Public Utilities Commission, one of the City's water suppliers, declared a water supply shortage and requested ten percent (10%) voluntary conservation; and

WHEREAS, on February 25, 2014, the Santa Clara Valley Water District requested mandatory twenty percent (20%) conservation due to the continued drought conditions in the State of California; and

WHEREAS, on April 25, 2014, the Governor suspended the application of the California Environmental Quality Act's applicability to the State Water Resource Control Board's adoption of emergency regulations pursuant to Water Code Section 1058.5; and

WHEREAS, on July 15, 2014, the State Water Resources Control Board adopted Resolution No. 2014-0038 adopting an emergency regulation for statewide urban water conservation requiring water retailers to implement their Water Shortage Contingency Plans; and

WHEREAS, on July 22, 2014, the Santa Clara Valley Water District approved funding additional staffing to augment community outreach regarding water conservation tips; and

WHEREAS, on August 19, 2014, the Milpitas City Council adopted an Urgency Ordinance No. 240.2 declaring a water shortage, adding supplemental water use restrictions to Water Shortage Contingency Plan as required by State law, and requested the community to implement water conservation measures with a goal of reducing consumption by twenty percent (20%); and

WHEREAS, on March 17, 2015, the State Water Resources Control Board adopted Resolution No. 2015-0013 adopting an emergency regulation for statewide urban water conservation requiring water retailers to implement additional conservation measures as part of their Water Shortage Contingency Plans; and

WHEREAS, on March 24, 2015, the Santa Clara Valley Water District (one of the City of Milpitas water suppliers) requested mandatory thirty percent (30%) conservation reflecting its supply conditions with the continued drought conditions in the State of California; and

WHEREAS, on April 1, 2015, the Governor declared a requirement of statewide twenty-five percent (25%) mandatory reduction with enforcement regulations; and

WHEREAS, on April 15, 2015, the San Francisco Public Utilities Commission (another City of Milpitas water supplier), declared a water supply shortage and requested ten percent (10%) voluntary conservation reflecting its supply conditions; and

WHEREAS, on May 5, 2015, the State Water Resources Control Board adopted additional emergency regulations for statewide urban water conservation requiring water retailers to implement additional conservation measures as part of their Water Shortage Contingency Plan, assigned a water conservation target to water retailers such as Milpitas, and imposing fines if retailers exceed their targets; and

WHEREAS, on May 12, 2015, the Santa Clara Valley Water District adopted a wholesale water rate structure that includes a ten percent (10%) penalty for water volume purchased above the contract amount; and

WHEREAS, on May 18, 2015, the State of California, Office of Administrative Law, readopted and further amended three sections of the State Water Resources Control Board's emergency regulations of May 5, 2015, intended to achieve the Governor Brown's call for twenty-five percent (25%) statewide potable water usage reduction; and

WHEREAS, drought conditions that formed the basis of the Governor's Emergency Proclamations continue to exist and the drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to further promote conservation; and

WHEREAS, the City Council of the City of Milpitas declares the continuation of a water shortage for the year 2015 (Stage 2 of the Milpitas Water Shortage Contingency Plan); and

WHEREAS, the actions previously taken by City staff and the community reduced water consumption by only 9.4 % and additional conservation activities are necessary to meet State laws and reduce consumption by thirty percent (30%); and

WHEREAS, in light of the continued water supply shortage in the State of California as set forth above, the City Council approves this Water Conservation Plan as further described in this Resolution to preserve the public peace, health and safety of its residents, businesses and community; and

WHEREAS, pursuant to California Water Code, Section 375, *et seq*., A Water Conservation Plan is proposed for implementation to achieve the required consumption reduction at an estimated cost of $800,000.

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

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

2. The City Council finds based on the above that there is a significant water shortage for Milpitas residents, business, and community and therefore takes the following water conservation measures and actions:

   a. The Water Conservation Plan, as described on Exhibit A of this Resolution, is hereby approved.

   b. A new Capital Improvement Project, Project No. 7126, titled "Water Conservation Program" is hereby approved to track program funding.

   c. Budget appropriations of $600,000 from the Water Fund and $200,000 from the Park Fund to the new Capital Improvement Project, Project No. 7126, titled "Water Conservation Program" are hereby approved.

   d. Simultaneous with the approval of this Resolution, the City Council will consider Urgency Ordinance No. 240.3 relating to additional water conservation restrictions and penalties for water consumptions.

   e. Due to severe statewide drought conditions and inadequate water supply for Milpitas residents, business, and community, the City Council hereby denies the request for additional water supply to the two hillside golf courses located in the City of Milpitas.

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

EXHIBIT A

WATER CONSERVATION PLAN

Elements	Description	Estimated annual City cost	Water saved per year (in HCF, 748 gallons = 1 HCF)	Timeline to start
1	Add two technicians to respond to water waste complaints (response is State-mandated)	$110,000	NA	1 month
2	Computer programming for State-mandated reports and revised billing	$100,000 utility billing $50,000 work order reporting	NA	2 months
3	Conservation Plan staff support	$270,000	200,000 to 800,000 (10 to 30% range depending on plan selected)	1- 3 months
4	Convert City irrigation sites adjacent to the recycled water pipeline	$200,000 (approx 10 sites	12,000	3-6 months
5	Outreach	$30,000		1-2 months
6	Install 4 new recycled water fill stations	$40,000		1-2 months
	Total	$800,000		

PLEASE NOTE:

This copy of Ordinance No. 240.3 is a "redlined" version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

URGENCY

NUMBER: **240.3**

TITLE: **AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 6 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO SUPPLEMENTAL WATER USE RESTRICTIONS AS REQUIRED BY STATE LAW**

HISTORY: This Ordinance was introduced by the City Council at its meeting of _____, 2015, upon motion by _____ and was adopted immediately as an urgency ordinance pursuant to provisions of California Government Code Sections 36934 and 36937 and Water Code Sections 350, et seq., and 375, et seq. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

RECITALS:

WHEREAS, Government Code Sections 36934 and 36937 authorize a city to adopt an urgency ordinance for the immediate preservation of the public peace, health or safety; and

WHEREAS, water is a precious resource shared by all and is needed to sustain life; and

WHEREAS, California Water Code Sections 10610 through 10657 require urban water retailers, such as the City of Milpitas, to adopt an Urban Water Management Plan and Water Shortage Contingency Plan every five (5) years; and

WHEREAS, the Milpitas City Council adopted the 2010 Urban Water Management Plan and Water Shortage Contingency Plan on June 7, 2011; and

WHEREAS, on January 17, 2014, the Governor issued a Proclamation declaring a State of Emergency due to severe drought conditions; and

WHEREAS, on January 28, 2014, the Santa Clara Valley Water District, one of the City's water suppliers, declared a water supply shortage and requested ten percent (10%) conservation; and

WHEREAS, on January 31, 2014, the San Francisco Public Utilities Commission, one of the City's water suppliers, declared a water supply shortage and requested ten percent (10%) voluntary conservation; and

WHEREAS, on February 25, 2014, the Santa Clara Valley Water District requested mandatory twenty percent (20%) conservation due to the continued drought conditions in the State of California; and

WHEREAS, on April 25, 2014, the Governor suspended the application of the California Environmental Quality Act's applicability to the State Water Resource Control Board's adoption of emergency regulations pursuant to Water Code Section 1058.5; and

WHEREAS, on July 15, 2014, the State Water Resources Control Board adopted Resolution No. 2014-0038 adopting an emergency regulation for statewide urban water conservation requiring water retailers to implement their Water Shortage Contingency Plans; and

WHEREAS, on August 19, 2014, the Milpitas City Council adopted an Urgency Ordinance No. 240.2 declaring a water shortage and adding supplemental water use restrictions to the Municipal Code as required by State law; and

WHEREAS, on March 17, 2015, the State Water Resources Control Board adopted Resolution No. 2015-0013 adopting an emergency regulation for Statewide urban water conservation requiring water retailers to implement additional conservation measures as part of their Water Shortage Contingency Plans; and

WHEREAS, on March 24, 2015, the Santa Clara Valley Water District (one of the City of Milpitas water suppliers) requested mandatory thirty percent (30%) conservation reflecting its supply conditions with the continued drought conditions in the State of California; and

WHEREAS, on April 1, 2015, the Governor declared a requirement of Statewide twenty-five percent (25%) mandatory reduction with enforcement regulations; and

WHEREAS, on April 15, 2015, the San Francisco Public Utilities Commission (another City of Milpitas water supplier), declared a water supply shortage and requested ten percent (10%) voluntary conservation reflecting its supply conditions; and

WHEREAS, on May 5, 2015, the State Water Resources Control Board adopted additional emergency regulations for Statewide urban water conservation requiring water retailers to implement additional conservation measures as part of their Water Shortage Contingency Plan, assigned a water conservation target to water retailers such as Milpitas, and imposing fines if retailers exceed their targets; and

WHEREAS, on May 12, 2015, the Santa Clara Valley Water District adopted a wholesale water rate structure that includes a 10% penalty for water volume purchased above the contract amount; and

WHEREAS, drought conditions that formed the basis of the Governor's Emergency Proclamations continue to exist and the drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to further promote conservation; and

WHEREAS, the City Council of the City of Milpitas declares the continuation of a water shortage for the year 2015 (Stage 2 of the Milpitas Water Shortage Contingency Plan) and add these additional conservation measures as required by State law; and require the community to implement water conservation measures with a goal of reducing consumption by thirty percent (30%); and

WHEREAS, in light of the continued water supply shortage in the State of California as set forth above, the City Council must take such action to be effective immediately and to do so requires an urgency ordinance to preserve the public peace, health and safety of its residents; and

WHEREAS, in accordance with Water Code Sections 350 et seq., 375 et seq., and the laws and regulations cited above, a certified copy of the full text of this Ordinance was posted in the City Clerk's Office at least five (5) days prior to the public hearing and a summary will be published in a newspaper of general circulation within fifteen (15) days of adoption of this Ordinance.

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

SECTION 1. RECORD, BASIS FOR ACTION AND FINDINGS

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 and the findings and justifications in the supporting staff report for this Ordinance are found to be true and correct and are incorporated herein by reference and adopted as the findings of this City Council.

SECTION 2. AMENDMENT OF MUNICIPAL CODE TITLE VIII, CHAPTER 6

Section VIII-6.500 of the Milpitas Municipal Code is hereby amended to read as follows:

VIII-6-5.00 Supplemental Water Use Restrictions

Notwithstanding Section VIII-6-3.00 or any other provision of the Municipal Code, the following uses of Potable Water are prohibited:

5.01 Use of Potable Water for cleaning of any hard surfaces, such as sidewalks, streets, buildings, and parking lots.

5.02 Use of Potable Water for construction purposes including dust control and compaction.

5.03 Construction of new swimming pools or ponds not currently permitted.

5.04 Use of Potable Water for cleaning, filling, or operating water features, such as decorative fountains.

5.05 Use of Potable Water for irrigation of golf courses, except greens and tees area.

5.06 Use of Potable Water for watering or irrigation of any plants, lawn, grass, landscaping or turf areas between hours of 8:00 p.m. and 8:00 a.m., adjusted for Daylight Saving Time, and for more than two (2) days during any seven (7) day period. The days of watering shall be:

Deleted: am

Deleted: pm

Address Ending in Odd Number - Monday and Thursday
Address Ending in Even Number - Tuesday and Friday
No address - Monday and Thursday

Use of Potable Water for short periods during timer adjustment and repair of irrigation system are exempt from the time and day restriction set forth above. The Director of Engineering is also authorized to approve a variation of the time and day schedule restriction, provided the variation meets the required reduction above of only two (2) days in any seven (7) day period.

5.07 Use of Potable Water for installation of new landscape unless served by Reclaimed Water.

5.08 Exceptions to the prohibitions enumerated in 5.01 through 5.07 may be granted in the discretion of the City Council.

Title VIII, Chapter 6 of the Milpitas Municipal Code is hereby amended to add new Sections 6, 7, 8 and 9 to read as follows:

VIII-6-6.00 Additional Supplemental Water Use Restrictions

Notwithstanding Section VIII-6-3.00, Section VIII-6-5.00 or any other provision of the Municipal Code, the following uses of Potable Water are prohibited:

6.01 The application of Potable Water to outdoor any plants, lawn, grass, landscaping or turf areas during and within forty-eight (48) hours after measurable rainfall.

6.02 To promote water conservation, owners and operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

6.03 Newly constructed homes and buildings shall be designed with drip or microspray irrigation systems, provided any new landscaping shall continue to be restricted from installation during the declared drought as set forth in Section VIII-5-5.07.

6.04 The application of Potable Water to street medians containing ornamental turf.

6.05 Hydrant flushing, except for health and safety purposes.

6.06 Pools and spas shall be covered when not in use to prevent evaporation.

6.07 The prohibitions enumerated in 6.01, 6.03, and 6.04 do not apply to any water treatment features, such as landscaping and green roofs, to meet the requirements of Municipal

Regional Stormwater National Pollutant Discharge Elimination System Permit No CAS612008, C3 Provision.

6.08 Exceptions to the prohibitions enumerated in 6.01 through 6.06 may be granted in the discretion of the City Council.

VIII-6-7.00 Drought Penalties

7.01 Residential Properties

a. The following penalties will be imposed to residential customers who fail to limit their use:

Residential Water Tiers	**FY15/16 Rate**	**Penalties**
1. 0-10 hcf	$3.62	No Penalty
2. >10 – 20 hcf	$4.80	No Penalty
3. >20 – 30 hcf	$6.47	No Penalty
4. > 30 hcf	$7.30	+10 %

FY = Fiscal Year
1 hcf = One Hundred Cubic Feet = 748 Gallons

7.02 Commercial, Industrial and Institutional Properties

a. Commercial, industrial, and institutional accounts shall be assigned water allotments equal to ninety percent (90%) of their usage during the same billing period in calendar year 2013. The following penalties will be imposed to commercial, industrial and institutional customers who fail to limit their use within the assigned allotment:

	FY15/16 Rate	Penalty
Commercial / Industrial / Institutional / Construction Meter	$7.30	+10%

FY = Fiscal Year
1 hcf = One Hundred Cubic Feet = 748 Gallons

7.03 Irrigation Accounts

a. Irrigation accounts shall be assigned water allotments equal to fifty percent (50%) of their usage during the same billing period in calendar year 2013. The following penalties will be imposed to irrigation customers who fail to limit their use within the assigned allotment:

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	FY 15/16 Rate	Penalty
Irrigation (potable)	$7.30	+10%

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FY = Fiscal Year
1 hcf = One Hundred Cubic Feet = 748 Gallons

7.04 The Drought Penalties set forth in this Section will be imposed in addition to the customer's normal rates charged pursuant to Section VIII-1-6.13 of the Municipal Code, as may be amended.

7.05 The Director of Engineering is authorized to assign allotments for water accounts that did not exist in 2013 or had a change in land use based on review of similar types of properties and uses.

7.06 The FY 15/16 water rates are shown here for convenience only and the real values shall be as set forth in Section VIII-1-6.13 of the Municipal Code, as may be amended.

VIII-6-8.00 Non-Compliance

Any violation of this Chapter shall be subject to the penalties provision set forth in Section I-1-4.09 (Penalty Provision), Section V-500-8.00 (Administrative Citation), or any other penalty provisions in the Municipal Code or State law.

VIII-6-9.00 Applicability

The prohibitions and rationing requirements identified in this Chapter are not applicable to fountains, irrigation systems, cooling towers, and dual-plumb sites that use non-potable water such as recycled water.

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 California Government Code Sections 36934 and 36937, this Ordinance is effective immediately upon adoption by the City Council as an Urgency Ordinance. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

City of Milpitas
2014-19 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Water	7126	Water Conservation Program	1

CONTACT: Steven Machida [3355]

PRIORITY: Health and Safety Projects

DESCRIPTION

This project provides for a Water Conservation Program including development, implementation, and management of a new City wide water rationing and conservation plan including community outreach and education. The new Program includes staff response to water waste complaints and the implementation of new State mandated water conservation programs. This project will require the conversion of City and private property irrigation facilities from potable to recycled water where they are adjacent to recycled water pipelines.

COMMENTS:

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	80,000	0	0	0	0	80,000
Administration	0	515,000	0	0	0	0	515,000
Surveying	0	0	0	0	0	0	0
Inspection	0	25,000	0	0	0	0	25,000
Land	0	0	0	0	0	0	0
Improvements	0	180,000	0	0	0	0	180,000
Equipment	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0
Totals	0	800,000	0	0	0	0	800,000

FINANCING	Prior Year	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Water Fund	0	600,000	0	0	0	0	600,000
Park Fund	0	200,000	0	0	0	0	200,000
Totals	0	800,000	0	0	0	0	800,000

FINANCE NOTES

Project created by City Council on June 16, 2015 with Budget Appropriation

1D

MEMORANDUM

Engineering Division

To: Honorable Mayor and City Council

Through: Tom Williams, City Manager

From: Steven Machida, P.E., Director of Engineering SJM

Subject: **Water Rationing Program Comparison**

Date: **June 8, 2015**

1 Recommendation

Staff evaluated various rationing programs and recommends a hybrid approach: a *Tiered Program* for residential customers and a *Percent of Use Program* for all other customers. The existing residential tiered rate structure has been effective, with residential accounts achieving a reduction of 7% overall (30% in the top tier). Consumption in the higher tiers represents outdoor usage, which must be reduced. A penalty equivalent to 10% of the fourth tier unit rate would be assessed on all usage in the fourth tier in addition to the regular unit rate. Residential customers who previously adopted conservation habits are not penalized. Commercial, industrial, and institutional indoor accounts would be assigned an allotment equal to 90% of their corresponding 2013 billing period usage. Usage above the allotment would be charged both the regular unit rate and a penalty equivalent to 10% of the regular unit rate. Irrigation accounts would be assigned an allotment of 50% of their corresponding 2013 billing period usage. Usage above the allotment would be charged at both the regular unit rate and a penalty equivalent to 10% of the regular unit rate.

2 Introduction

The City of Milpitas (City) needs to adopt stricter conservation and rationing requirements to achieve mandated goals. This technical memorandum (TM) compares several existing water rationing programs in place in the Bay Area today to provide Staff and Council perspective into the different types of rationing programs and penalties.

3 Background

On May 5, 2015, the State passed a Resolution that requires all urban water users to implement conservation programs and also requires that each City (or Agency) meet a determined conservation level. However, the Resolution gives each City the flexibility to meet their conservation level in the manner that they see fit, through conservation, rationing, or a combination of both. Starting on June 1, 2015, the State requires that the City to meet a water use level that is 12% less than the 2013 baseline. The City could incur a fine of up to $10,000 per day if the 12% conservation level is not met. Additionally, the local water agencies that provide the City with water (Santa Clara Valley

Water District (SCVWD) and San Francisco Public Utilities Commission (SFPUC)) informed the City that it must meet 30% and 10% conservation levels, respectively. In order to comply with the State Resolution and with the local water wholesaler requests, Utility Engineering Staff has proposed a conservation and rationing program that City Council will consider on June 16, 2015. Many other cities have already gone forward with rationing programs and this technical memorandum highlights some of these programs.

4 Rationing Program Comparison

There are various ways for Cities to implement conservation and rationing programs. **Conservation Programs** encourage certain customer behaviors to conserve water, such as fining someone for hosing down the sidewalk, to having hotels place signs in hotel bathrooms to encourage hotel patrons to re-use linens. Most agencies are adopting the State-mandated water use restrictions. Therefore, a side-by-side comparison of other City's water use restrictions are not included herein.

Rationing Programs require customers to reduce (or continue reductions) in potable water use, such as limiting the amount of water that a customer can use each billing period by applying a penalty to water use above a set level. The two most common types of rationing programs are *Tiered Programs* and *Percent of Use Programs*. *Tiered Programs* establish a unit cost up to a specific volume of water used with increasing costs for higher volumes of water used. Financial penalties may be applied in addition to the tiered rate. However, tiered programs do not address commercial, industrial, institutional, or irrigation users, since it is not possible to set up a tiered system for the wide variety of users that are contained in these categories. *Percent of Use Programs* establish an allotment based upon a certain percentage of each customer's 2013 use going forward. The *Percent of Use Program* requires Cities/Agencies to develop a unique water use level for each customer while the *Tiered Program* sets all residential customers at the same level. Appeal processes can be draining on City staff resources. During the last drought in the 1990s, over 1/2 of the households appealed their rationing level, which greatly increased the staff need in both the Engineering and Finance sections. The memorandum and table focus on a comparison of Rationing Programs.

Attachment A highlights current programs implemented by nine local cities and agencies. This attachment focuses on the following points:

- Has the City/Agency declared an official drought stage?
- Has the City/Agency implemented rationing? If so, what rationing method are they using?
- What penalties does the customer incur for using water above the water rationing allotment?

5 Conclusion

Below are some of the key conclusions from the review of the conservation and rationing programs of the nine Bay Area cities and agencies:

- 100% have implemented a conservation program.

- 67% have implemented a rationing program.
- Out of those who have implemented a rationing program:
    - One City has implemented a hybrid program, using a *Tiered Program* for residential customers and a *Percent of Use Program* for irrigation and large water users, similar to what Milpitas is considering.
    - Two cities/agencies have implemented a *Tiered Program*
    - Three cities/agencies have implemented a *Percent of Use Program* (based on the customer's previous use)
- For those cities/agencies with rationing in place, financial penalties vary from $0-$50 per unit of water (HCF).

The proposed rationing program builds from the best ideas from various Bay Area City rationing programs and creates a plan that will allow the City to meet the State and local conservation requirements.

Attachment A: Rationing Program Comparison

City	Date of latest drought ordinance	Rationing Method	Penalties for usage above allotment
Milpitas	6/16/15, proposed	**Hybrid Method** **Tiered.** Drought penalty on highest tier (above 15 HCF per month) for residential customers. **Percent of Use.** Commercial/Industrial/Institutional Customers must use less than 90% of their baseline 2013 water use. Irrigation Customers must use less than 50% of their baseline 203 water use.	Residential: 10% penalty on all water consumed in Tier 4 All other customers: 10% penalty on all water consumed above allotment.
Santa Cruz	4/14/2015	**Hybrid Method** **Tiered**. Drought penalty for use above 10 HCF per month. Customers with larger families can appeal to get 2 HCF per person/month. **Percent of Use** (irrigation and large water user accounts). Irrigation users must use less than 1/3 of their non-drought water budget.	• $25 per CCF for the first 10% over the monthly allotment. • $50 per CCF for any usage more than 10% over the monthly allotment • Can attend Water School to have first penalty waived.
ACWD	3/13/2014	**Tiered.** Drought surcharges on higher tiers (above 8 units per month) for residential use, and all tiers for all other customers.	Drought surcharge: Tier 1 (0-16 units)-- no surcharge Tier 2 (17-30 units)-- $1.48 surcharge per unit Tier 3 (30+ units)--$2.00 surcharge per unit For all non-residential customers a surcharge of $0.46 is applied to every unit of water that they use.
SJWC	6/15/2015, proposed	**Tiered.** Surcharges on usage by residential and dedicated landscape customers above declared monthly allotment. (Allotment in January is 9 units while August allotment is 13 units) Extra 2 units of water per month if customer fills out appeal form and can prove more than 4 people live at household. Program for other categories of customers (commercial, industrial, etc.) may be adopted at a later date.	•Drought Surcharge 1 (DS1): Excess consumption over allocation up to the 2013 monthly average will be charged at $3.56 per unit •Drought Surcharge 2 (DS2): Excess consumption over the 2013 monthly average will be charged at $7.13per unit
Santa Clara	4/14/2015	**Percent of Use.** Set a 30% use reduction, with baseline of their 2013 use for all customers.	1st: Warning, citation, up to $500 fine. 2nd: $100 to $1000 fine Subsequent violations: $100 to $1000 fine, flow restrictor, termination of service.

City	Date of latest drought ordinance	Rationing Method	Penalties for usage above allotment
Pleasanton	5/6/2015	**Percent of Use.** Penalties if households use more than 75% of 2013 water use for the same month. All households, businesses and government offices in the city have been designated 75 percent of the water they used in 2013.	First time offenders pay a $50 fixed penalty, plus $4 per each unit (748 gallons) volume penalty for all water used in a two-month billing cycle -- not just the excess water. 2nd offense: $8/unit plus $100 3rd offense: $12/unit plus $250 4th+ offense: $16/unit plus $500
Contra Costa Water District (CCWD)	6/3/2015	**Percent of Use.** Residents must reduce their use to 25% below their 2013 water use. Irrigation customers must reduce to 40% below their 2013 water use.	1st: warning 2nd: $250 3rd: $500 Subsequent violations: $10 per HCF (748 gallons), suspension of service.
Mountain View	5/19/2015	**None**	Not applicable
Sunnyvale	5/12/2015	**None**	Not applicable
Gilroy	5/19/2015	**None**	Not applicable

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2015-0013

TO ADOPT AN EMERGENCY REGULATIONS FOR
STATEWIDE URBAN WATER CONSERVATION

WHEREAS:

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order (April 2014 Proclamation) to strengthen the State's ability to manage water and habitat effectively in drought conditions, and called on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation finds that the continuous severe drought conditions present urgent challenges across the State, including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity, if drought conditions continue into 2015. The April 2014 Proclamation also suspends the environmental review required by the California Environmental Quality Act to allow the emergency regulation and other actions to take place as quickly as possible;

2. The April 2014 Proclamation refers to the Governor's Proclamation No. 1-17-2014, issued on January 17, 2014, declaring a drought State of Emergency to exist in California due to severe drought conditions (January 2014 Proclamation). The January 2014 Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January 2014 Proclamation also calls on all Californians to reduce their water usage by 20 percent;

3. On December 22, 2014, in light of the continued lack of rain, Governor Brown issued Executive Order B-28-14, which extends the California Environmental Quality Act suspension through May 31, 2016 for Water Code section 13247 and certain activities identified in the January 2014 and April 2014 proclamations;

4. Drought conditions are continuing. As of March 3, 2015, snow water equivalents for the Northern, Central, and Southern Sierra regions were at 16 percent, 20 percent, and 21 percent of normal for that date, respectively. Additionally, most reservoirs are less than 60 percent full and January 2015 was one of the driest months ever recorded in California history. Moreover, many communities face the prospect of needing emergency drinking water supplies;

5. The likelihood that any additional precipitation will significantly reduce the severity of drought conditions this year is extremely low;

6. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports";

7. On July 15, 2014, the State Water Board adopted an emergency regulation to support water conservation (Resolution No. 2014-0038), and that regulation became effective July 28, 2014 upon approval by the Office of Administrative Law (OAL);

8. The current emergency regulation will expire on April 25, 2015;

9. The current emergency regulation has supported Californians' water conservation efforts, with over 119 billion gallons saved from August 2014 through January 2015;

10. Many Californians have taken bold steps over the years and in this year to reduce water use; nevertheless, the dire nature of the current drought requires additional conservation actions from residents and businesses. Some severely-affected communities have implemented water rationing, limiting water use in some cases to only 50 gallons per person per day, foregoing showers, laundry, toilet flushing, and all outdoor watering;

11. Water conservation is the easiest, most efficient and most cost-effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this summer is water available later in the season or next year, giving water suppliers the flexibility to manage their systems efficiently;

12. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water;

13. Most urban water suppliers have placed restrictions on outdoor watering, but the State Water Board has nevertheless received many reports of excessive water use;

14. Education and enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated;

15. Public information and awareness is critical to achieving conservation goals, and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (http://saveourwater.com);

16. Other parts of the world have faced social and economic hardship due to severe drought. Californians must continue to make lifestyle changes, including landscape choices that conserve even more water;

17. On March 6, 2015, the State Water Board issued public notice that it would consider the adoption of the emergency regulation at the Board's regularly-scheduled March 17, 2015 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations;

18. As discussed above, the State Water Board is adopting the emergency regulation because of the continuing emergency drought conditions, the need for prompt action, and the need to act before the current emergency regulation expires on April 25, 2015; and

19. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain the enforcement discretion in enforcing the regulation to the extent authorized. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board re-adopts California Code of Regulations, title 23, sections 863, 864,and 865, as appended to this resolution as an emergency regulation;

2. State Water Board staff will submit the regulation to the OAL for final approval;

3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes;

4. This regulation shall remain in effect for 270 days after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5;

5. The State Water Board directs staff to provide the Board with monthly updates on the implementation of the emergency regulation and its effect;

6. The State Water Board directs staff to condition funding upon compliance with the emergency regulation, to the extent feasible;

7. The State Water Board directs staff to work with the DWR and the Save Our Water campaign to disseminate information regarding the emergency regulations; and

8. The State Water Board directs staff to update the electronic reporting portal to include data fields for local agencies to report on compliance and enforcement activities.

THEREFORE BE IT FURTHER RESOLVED THAT:

9. The State Water Board commends Californians who heeded the call for conservation and have helped to save over 119 billion gallons from August 2014 through January 2015. The State Water Board calls upon Californians to redouble their conservation efforts in the face of a fourth year of severe drought. For homeowners and businesses that have delayed removing turf, planting drought-tolerant landscapes, or installing efficient irrigation systems, the time to act is now;

10. The State Water Board calls upon water suppliers to ensure that they have adequate personnel and financial resources to implement conservation requirements not only for 2015, but also for another year of drought should it occur. Water suppliers that face budget shortfalls due to reduced sales should take immediate steps to raise necessary revenues in a way that actively promotes continued conservation. In Resolution No. 2014-0038, the State Water Board called on all urban water suppliers to evaluate their rate structures and begin to implement needed changes as part of planning for another dry year. These efforts should be continued and redoubled;

11. Disadvantaged communities may require assistance in increasing water conservation and State agencies should look for opportunities to provide assistance in promoting water conservation;

12. The State Water Board calls upon all water suppliers to take further actions to increase water conservation, such as by:

    a. providing customers with timely and easy-to-understand information on the average

    b. number of gallons they use each month and each day within their billing period; accelerating the completion of projects that will conserve potable water by making use of non-potable supplies, such as recycled water and stormwater collection projects; and

    c. accelerating projects to fix leaks, and to conduct a system-wide water loss audit as soon as possible;

13. The State Water Board calls upon the restaurant and hospitality industry to take further actions to increase water conservation, such as by utilizing water efficient pre-rinse spray valves for dish washing and training staff on the new regulation so that the minimum amount of water is used to wash towels and linens; and

14. The State Water Board directs staff to develop a statewide portal for reporting water waste.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 17, 2015.

AYE:	Chair Felicia Marcus Vice Chair Frances Spivy-Weber Board Member Tam M. Doduc Board Member Steven Moore Board Member Dorene D'Adamo
NAY:	None
ABSENT:	None
ABSTAIN:	None

Jeanine Townsend

Jeanine Townsend
Clerk to the Board

ADOPTED TEXT OF EMERGENCY REGULATION

Article 22.5. Drought Emergency Water Conservation

Sec. 863 Findings of Drought Emergency

(a) The State Water Resources Control Board finds as follows:

(1) On January 17, 2014, the Governor issued a proclamation of a state of emergency under the California Emergency Services Act based on drought conditions;

(2) On April 25, 2014, the Governor issued a proclamation of a continued state of emergency under the California Emergency Services Act based on continued drought conditions;

(3) The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist;

(4) The present year is critically dry and has been immediately preceded by two or more consecutive below normal, dry, or critically dry years; and

(5) The drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to further promote conservation.

Authority: Wat. Code, § 1058.5.
References: Wat. Code, §§ 102, 104, 105.

Sec. 864 ~~Prohibited Activities~~End-User Requirements in Promotion of Water Conservation

(a) To promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

(1) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(2) The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(3) The application of potable water to driveways and sidewalks;~~ and~~

(4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system~~.~~;

(5) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall; and

(6) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased.

(b) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

~~(b)~~(c) The taking of any action prohibited in subdivision (a) or the failure to take any action required in subdivision (b)~~ of this section~~, in addition to any other applicable civil or criminal penalties, is an infraction, punishable by a fine of up to five hundred dollars ($500) for each day in which the violation occurs.

Authority: Wat. Code, § 1058.5.
References: Wat. Code, §§ 102, 104, 105.

Sec. 865 Mandatory Actions by Water Suppliers

(a) The term "urban water supplier," when used in this section, refers to a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

(b)(1) To promote water conservation, each urban water supplier shall implement all requirements and actions of the stage of its water shortage contingency plan that ~~imposes~~ includes mandatory restrictions on the number of days that outdoor irrigation of ornamental landscapes or turf with potable water is allowed, or shall amend its water shortage contingency plan to include mandatory restrictions on the number of days that outdoor irrigation of ornamental landscapes or turf with potable water is allowed and implement these restrictions within forty-five (45) days. Urban water suppliers with approved alternate plans as described in subdivision (b)(2) are exempted from this requirement.

(2) ~~As an alternative to subdivision (b)(1) a~~An urban water supplier may submit a request to the Executive Director for approval of an alternate plan that includes allocation-based rate structures that satisfies the requirements of chapter 3.4 (commencing with section 370) of division 1 of the Water Code, and the Executive Director may approve such an alternate plan upon determining that the rate structure, in conjunction with other measures, achieves a level of conservation that would be superior to that achieved by implementing limitations on outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week.

(c) To promote water conservation, each urban water supplier that does not have a water shortage contingency plan that restricts the number of days that outdoor irrigation of ornamental landscapes and turf with potable water is allowed, or has been notified by the Department of Water Resources that its water shortage contingency plan does not meet the requirements of Water Code section 10632 shall, within ~~thirty~~ forty-five (~~30~~45) days, limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week~~ or shall implement another mandatory conservation measure or measures intended to achieve a comparable reduction in water consumption by the persons it serves relative to the amount consumed in 2013~~.

(d) In furtherance of the promotion of water conservation each urban water supplier shall:

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-users exclusive control.

(2) Prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report

shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. ~~Beginning October 15, 2014, t~~The monitoring report shall specify the population served by the urban water supplier, the percentage of water produced that is used for the residential sector, descriptive statistics on water conservation compliance and enforcement efforts, and the number of days that outdoor irrigation is allowed. The monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves. ~~In its initial monitoring report, each urban water supplier shall state the number of persons it serves.~~

(e) To promote water conservation, each distributor of a public water supply, as defined in Water Code section 350, that is not an urban water supplier shall, within ~~thirty~~ forty-five (~~30~~45) days, take one or more of the following actions:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week; or

(2) Implement another mandatory conservation measure or measures intended to achieve a ~~comparable~~20 percent reduction in water consumption by the persons it serves relative to the amount consumed in 2013.

Authority: Wat. Code, § 1058.5.
References: Wat. Code, §§ 102, 104, 105; 350; 10617; 10632.

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2015-0032

TO ADOPT AN EMERGENCY REGULATION FOR
STATEWIDE URBAN WATER CONSERVATION

WHEREAS:

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order (April 2014 Proclamation) to strengthen the State's ability to manage water and habitat effectively in drought conditions, and called on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation finds that the continuous severe drought conditions present urgent challenges across the State, including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity, if drought conditions continue into 2015. The April 2014 Proclamation also suspends the environmental review required by the California Environmental Quality Act to allow the emergency regulation and other actions to take place as quickly as possible;

2. The April 2014 Proclamation refers to the Governor's Proclamation No. 1-17-2014, issued on January 17, 2014, declaring a drought State of Emergency to exist in California due to severe drought conditions (January 2014 Proclamation). The January 2014 Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January 2014 Proclamation also calls on all Californians to reduce their water usage by 20 percent;

3. On December 22, 2014, in light of the continued lack of rain, Governor Brown issued Executive Order B-28-14, which extends the California Environmental Quality Act suspension through May 31, 2016 for Water Code section 13247 and certain activities identified in the January 2014 and April 2014 proclamations;

4. On April 1, 2015, Governor Brown issued a new Executive Order that directs the State Water Board to impose restrictions on urban water suppliers to achieve a statewide 25 percent reduction in potable urban usage through February 2016; require commercial, industrial, and institutional users to implement water efficiency measures; prohibit irrigation with potable water of ornamental turf in public street medians; and prohibit irrigation with potable water outside newly constructed homes and buildings that is not delivered by drip or microspray systems; along with other directives;

5. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports";

6. On July 15, 2014, the State Water Board adopted an emergency regulation to support water conservation (Resolution No. 2014-0038), and that regulation became effective July 28, 2014 upon approval by the Office of Administrative Law (OAL);

7. On March 17, 2015, the State Water Board amended and readopted the emergency regulation to support water conservation (Resolution No. 2015-0013), which became effective March 27, 2015 upon approval by OAL;

8. The current emergency regulation has supported Californians' water conservation efforts, with over 125 billion gallons saved from August 2014 through March 2015; however, statewide water use is only nine percent less than the same months in 2013. Achieving a 25 percent reduction in use will require even greater conservation efforts across the state. In particular, many communities must dramatically reduce their outdoor water use;

9. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes will survive while receiving a decreased amount of water;

10. Although urban water suppliers have placed restrictions on outdoor watering, the State Water Board continues to receive reports of excessive outdoor water use;

11. Water conservation is the easiest, most efficient and most cost-effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this summer is water available later in the season or next year, reducing the likelihood of even more severe water shortages should the drought continue;

12. Education and enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated;

13. Public information and awareness is critical to achieving conservation goals, and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (http://saveourwater.com);

14. Many California communities are facing social and economic hardship due to this drought. The rest of us can make adjustments to our water use, including landscape choices that conserve even more water;

15. The California Constitution declares, at article X, section 2, that the water resources of the state must be put to beneficial use in a manner that is reasonable and not wasteful. Relevant to the current drought conditions, the California Supreme Court has clarified that "what may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time." (*Tulare Dist. v. Lindsay Strathmore Dist*. (1935) 3 Cal.2d 489, 567.) In support of water conservation, the legislature has, through Water Code section 1011, deemed reductions in water use due to conservation as equivalent

to reasonable beneficial use of that water. Accordingly, this regulation is in furtherance of article X, section 2 during this drought emergency. This temporary emergency regulation is not to be used in any future administrative or judicial proceedings as evidence or finding of waste and unreasonable use of any individual water user or water supplier subject to this regulation, and are not to affect or otherwise limit any rights to water conserved under applicable law, including without limitation, water conserved consistent with Water Code section 1011;

16. Directive two of the Governor's April 1, 2015 Executive Order directs the State Water Board to consider the relative per capita usage of each urban water supplier's service area and require that areas with high per capita use achieve proportionally greater reductions than areas with low per capita use;

17. On April 7, 2015, the State Water Board issued a draft framework proposing increasing levels of required water reduction based upon residential per capita per day use (R-GPCD) for the proposed regulation, and solicited public comments. The Board received over 300 comments on the framework, primarily relating to the levels of required water reduction;

18. On April 18, the State Water Board issued draft regulatory language for public comment based on the April 7 framework and the comments received. The draft regulatory language reflected careful consideration of all comments including those directed at the levels of required reduction. Again, the Board received close to 300 comments;

19. On April 28, 2015, the State Water Board issued a final version of draft regulatory language for comment, followed on April 29 by a formal public notice that it would consider the adoption of the emergency regulation at the Board's regularly-scheduled May 5 and 6, 2015 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations;

20. As discussed above, the State Water Board is adopting the emergency regulation because of the continuing emergency drought conditions, the need for prompt action to prevent the waste and unreasonable use of water and to promote conservation, and the specific actions called for in the Governor's April 1, 2015 Executive Order; and

21. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain the enforcement discretion in enforcing the regulation to the extent authorized. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 866 and re-adopts sections 863, 864,and 865, as appended to this resolution as an emergency regulation;

2. State Water Board staff will submit the regulation to OAL for final approval;

3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or the Executive Director's designee may make such changes;

4. This regulation shall remain in effect for 270 days after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5;

5. The State Water Board directs staff to provide the Board with monthly updates on the implementation of the emergency regulation and its effect. These updates shall include information regarding the progress of the Building Standards Commission, Department of Housing and Community Development, and other state agencies in the adoption and implementation of emergency regulations or other requirements that implement increased outdoor irrigation efficiency for new construction. These regulations and other requirements will extend existing efficiency standards for new construction to the outdoor environment and ensure that California's new homes are constructed to meet the growing demand with the most efficient standards;

6. The State Water Board directs staff to condition funding upon compliance with the emergency regulation, to the extent feasible;

7. The State Water Board directs staff to work with DWR and the Save Our Water campaign to disseminate information regarding the emergency regulation; and

8. The State Water Board directs staff to update the electronic reporting portal to include data fields for the new reporting required by the emergency regulation.

THEREFORE BE IT FURTHER RESOLVED THAT:

9. The State Water Board shall work with DWR, the Public Utilities Commission, and other agencies to support urban water suppliers' actions to implement rates and pricing structures to incent additional conservation, as required by directive eight in the Governor's April 1, 2015 Executive Order. The Fourth District Court of Appeal's recent Decision in *Capistrano Taxpayer Association Inc. v. City of San Juan Capistrano* (G048969) does not foreclose the use of conservation-oriented rate structures;

10. The State Water Board calls upon water suppliers to:

    a. ensure that adequate personnel and financial resources exist to implement conservation requirements not only for 2015, but also for another year of drought should it occur. Water suppliers that face budget shortfalls due to reduced sales should take immediate steps to raise necessary revenues in a way that actively promotes continued conservation;

    b. expedite implementation of new conservation programs by minimizing internal review periods and utilizing emergency authorities, as appropriate;

c. consider the relative water use and conservation practices of their customers and target those with higher water use to achieve proportionally greater reductions than those with low use;

d. minimize financial impacts to low-income customers;

e. preserve safe indoor water supplies in areas with very low R-GPCD and where necessary to protect public health and safety;

f. promote low-water use methods of preserving appropriate defensible space in fire-prone areas, consistent with local fire district requirements;

g. educate customers on the preservation of trees;

h. promote on-site reuse of water; and

i. promptly notify staff of the supplier's need for an alternate method of compliance pursuant to resolved paragraph 16.

11. The State Water Board calls upon all businesses within California's travel and tourism sectors to inform visitors of California's dire drought situation and actions visitors should take to conserve water;

12. The State Water Board commends wholesale water agencies that have set aggressive conservation targets for their retail water suppliers;

13. The State Water Board commends water suppliers that have made investments to boost drought-resistant supplies, such as advanced treated recycled water and desalination. Those investments help to make communities more resilient in the face of drought;

14. The State Water Board commends the many water suppliers that have already surpassed their 20x2020 conservation targets. Long-term conservation efforts are critical to maintaining economic and social well-being, especially in light of the impacts of climate change on California's hydrology;

15. During this drought emergency, heightened conservation that extends urban resilience is necessary. The State Water Board's focus is primarily on immediate reductions in outdoor water use. Some short-term conservation efforts, such as landscape conversions and installation of efficient appliances, will also support long-term conservation objectives, and are encouraged wherever possible;

16. The State Water Board recognizes that some commercial and industrial customers, while accounting for a significant portion of total use in a service area, have already taken steps to significantly reduce their water consumption and cannot further reduce their use without substantial impacts. However, the Board also recognizes that in many areas there are significant opportunities for reductions in water use by industries and commercial enterprises that have yet to take action, especially those with large areas of non-functional turf. The Board directs staff to respond promptly upon receipt of any request for alternate enforceable methods of compliance. If the supplier believes the conservation standard is unachievable due to firm commercial and industrial water use

and residential use reductions that would affect public health and safety, it should provide any supporting information or documentation for an alternate method of compliance; and

17. Some water suppliers have called for further refinement of the tiers to reflect a range of factors that contribute to water use, including but not limited to temperature, lot size, and income. Others have called for an approach that provides greater recognition for early investments in conservation, the development of local, drought resistant water supplies, and health and safety needs. These suggestions and many others are important considerations in the development of a more comprehensive, and long term, conservation framework. The State Water Board directs staff to work with stakeholders on a thoughtful process to devise options for extended and expanded emergency regulations should the drought continue into 2016.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 5, 2015.

AYE:	Chair Felicia Marcus Vice Chair Frances Spivy-Weber Board Member Tam M. Doduc Board Member Steven Moore Board Member Dorene D'Adamo
NAY:	None
ABSENT:	None
ABSTAIN:	None

Jeanine Townsend

Jeanine Townsend
Clerk to the Board

ADOPTED TEXT OF EMERGENCY REGULATION

Article 22.5. Drought Emergency Water Conservation.

Sec. 863. Findings of Drought Emergency.

(a) The State Water Resources Control Board finds as follows:

(1) On January 17, 2014, the Governor issued a proclamation of a state of emergency under the California Emergency Services Act based on drought conditions;

(2) On April 25, 2014, the Governor issued a proclamation of a continued state of emergency under the California Emergency Services Act based on continued drought conditions;

(3) On April 1, 2015, the Governor issued an Executive Order that, in part, directs the State Board to impose restrictions on water suppliers to achieve a statewide 25 percent reduction in potable urban usage through February, 2016; require commercial, industrial, and institutional users to implement water efficiency measures; prohibit irrigation with potable water of ornamental turf in public street medians; and prohibit irrigation with potable water outside newly constructed homes and buildings that is not delivered by drip or microspray systems;

(4) The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist;

(5) The present year is critically dry and has been immediately preceded by two or more consecutive below normal, dry, or critically dry years; and

(6) The drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to prevent waste and unreasonable use of water and to further promote conservation.

Authority: Section 1058.5, Water Code.
References: Cal. Const., Art., X § 2; Sections 102, 104, 105, and 275, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 864. End-User Requirements in Promotion of Water Conservation.

(a) To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

(1) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(2) The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(3) The application of potable water to driveways and sidewalks; and

(4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system;

(5) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall;

(6) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased;

(7) The irrigation with potable water of ornamental turf on public street medians; and

(8) The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development.

(b) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

(c) Immediately upon this subdivision taking effect, all commercial, industrial and institutional properties that use a water supply, any portion of which is from a source other than a water supplier subject to section 865, shall either:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week; or

(2) Reduce potable water usage supplied by sources other than a water supplier by 25 percent for the months of June 2015 through February 2016 as compared to the amount used from those sources for the same months in 2013.

(d) The taking of any action prohibited in subdivision (a) or the failure to take any action required in subdivisions (b) or (c), is an infraction, punishable by a fine of up to five hundred dollars ($500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

Authority: Section 1058.5, Water Code.
References: Cal. Const., Art., X § 2; Sections 102, 104, 105, 275, 350, and 10617, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 865. Mandatory Actions by Water Suppliers.

(a) As used in this section:

(1) "Distributor of a public water supply" has the same meaning as under section 350 of the Water Code, except it does not refer to such distributors when they are functioning solely in a wholesale capacity, but does apply to distributors when they are functioning in a retail capacity.

(2) "R-GPCD" means residential gallons per capita per day.

(3) "Total potable water production" means all potable water that enters into a water supplier's distribution system, excluding water placed into storage and not withdrawn for use during the reporting period, or water exported outsider the supplier's service area.

(4) "Urban water supplier" means a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

(b) In furtherance of the promotion of water conservation each urban water supplier shall:

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-user's exclusive control.

(2) Prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. The monitoring report shall specify the population served by the urban water supplier, the percentage of water produced that is used for the residential sector, descriptive statistics on water conservation compliance and enforcement efforts, and the number of days that outdoor irrigation is allowed, and monthly commercial, industrial and institutional sector use. The monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves.

(c)(1) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor's April 1, 2015 Executive Order, each urban water supplier shall reduce its total potable water production by the percentage identified as its conservation standard in this subdivision. Each urban water supplier's conservation standard considers its service area's relative per capita water usage.

(2) Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrologic region in which the water supplier is located, and that has a minimum of four years' reserved supply available may, submit to the Executive Director for approval a request that, in lieu of the reduction that would otherwise be required under paragraphs (3) through (10), the urban water supplier shall reduce its total potable water production by 4 percent for each month as compared to the amount used in the same month in 2013. Any such request shall be accompanied by information showing that the supplier's sources of supply do not include groundwater or water imported from outside the hydrologic region and that the supplier has a minimum of four years' reserved supply available.

(3) Each urban water supplier whose average July-September 2014 R-GPCD was less than 65 shall reduce its total potable water production by 8 percent for each month as compared to the amount used in the same month in 2013.

(4) Each urban water supplier whose average July-September 2014 R-GPCD was 65 or more but less than 80 shall reduce its total potable water production by 12 percent for each month as compared to the amount used in the same month in 2013.

(5) Each urban water supplier whose average July-September 2014 R-GPCD was 80 or more but less than 95 shall reduce its total potable water production by 16 percent for each month as compared to the amount used in the same month in 2013.

(6) Each urban water supplier whose average July-September 2014 R-GPCD was 95 or more but less than 110 shall reduce its total potable water production by 20 percent for each month as compared to the amount used in the same month in 2013.

(7) Each urban water supplier whose average July-September 2014 R-GPCD was 110 or more but less than 130 shall reduce its total potable water production by 24 percent for each month as compared to the amount used in the same month in 2013.

(8) Each urban water supplier whose average July-September 2014 R-GPCD was 130 or more but less than 170 shall reduce its total potable water production by 28 percent for each month as compared to the amount used in the same month in 2013.

(9) Each urban water supplier whose average July-September 2014 R-GPCD was 170 or more but less than 215 shall reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013.

(10) Each urban water supplier whose average July-September 2014 R-GPCD was 215 or more shall reduce its total potable water production by 36 percent for each month as compared to the amount used in the same month in 2013.

(d)(1) Beginning June 1, 2015, each urban water supplier shall comply with the conservation standard specified in subdivision (c).

(2) Compliance with the requirements of this subdivision shall be measured monthly and assessed on a cumulative basis.

(e)(1) Each urban water supplier that provides potable water for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (b), may subtract the amount of water provided for commercial agricultural use from its potable water production total, provided that any urban water supplier that subtracts any water provided for commercial agricultural use from its total potable water production shall:

(A) Impose reductions determined locally appropriate by the urban water supplier, after considering the applicable urban water supplier conservation standard specified in subdivision (c), for commercial agricultural users meeting the definition of Government Code section 51201, subdivision (b) served by the supplier;

(B) Report its total potable water production pursuant to subdivision (b)(2) of this section, the total amount of water supplied for commercial agricultural use, and shall identify the reduction imposed on its commercial agricultural users and each recipient of potable water for commercial agricultural use;

(C) Certify that the agricultural uses it serves meet the definition of Government Code section 51201, subdivision (b); and

(D) Comply with the Agricultural Water Management Plan requirement of paragraph 12 of the April 1, 2015 Executive Order for all commercial agricultural water served by the supplier that is subtracted from its total potable water production.

(2) Submitting any information pursuant to subdivision (e)(1)(B) or (C) of this section that is found to be materially false by the board is a violation of this regulation, punishable by civil liability of up to five hundred dollars ($500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f)(1) To prevent waste and unreasonable use of water and to promote water conservation, each distributor of a public water supply that is not an urban water supplier shall take one or more of the following actions:

(A) Limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week; or

(B) Reduce by 25 percent reduction its total potable water production relative to the amount produced in 2013.

(2) Each distributor of a public water supply that is not an urban water supplier shall submit a report by December 15, 2015, on a form provided by the Board, that either confirms compliance with subdivision (f)(1)(A) or identifies total potable water production, by month, from June through November, 2015, and total potable water production, by month, for June through November 2013.

Authority: Section 1058.5, Water Code.
References: Cal. Const., Art., X § 2; Sections 102, 104, 105, 275, 350, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 866. Additional Conservation Tools.

(a)(1) To prevent the waste and unreasonable use of water and to promote conservation, when a water supplier does not meet its conservation standard required by section 865 the Executive Director, or the Executive Director's designee, may issue conservation orders requiring additional actions by the supplier to come into compliance with its conservation standard.

(2) A decision or order issued under this article by the board or an officer or employee of the board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the California Water Code.

(b) The Executive Director, or his designee, may issue an informational order requiring water suppliers, or commercial, industrial or institutional properties that receive any portion of their supply from a source other than a water supplier subject to section 865, to submit additional information relating to water production, water use or water conservation. The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to $500 per day for each day the violation continues pursuant to Water Code section 1846.

Authority: Section 1058.5, Water Code.
References: Cal. Const., Art., X § 2; Sections 100, 102, 104, 105, 174, 186, 187, 275, 350, 1051, 1122, 1123, 1825, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

1G

January 15, 2015

City of Milpitas
Attn: Steven Machida, Public Works Director/City Engineer
455 E Calaveras Blvd
Milpitas, CA 95035

RE: **Request for Water Service for Summitpointe Golf Club, 1500 County Club Drive, Milpitas, California**

Dear Mr. Leung:

As you may recall, American Golf Corporation, operators of Summitpointe Golf Club located at 1500 Country Club Drive in Milpitas, (the "Club"), made a request in April of 2014 to the City of Milpitas to provide a potable water source for the golf course as a backup supply when deliveries from Santa Clara Valley Water District ("District") became unavailable. We were very appreciative that the City was able to accommodate our request on a temporary basis at that time. Due to multiple extensions from the District, recent rainfall, and the Club's conservation efforts, the Club has not utilized any City water to date.

Since early last spring, the Club has been diligently working on alternative water sources and water conservation practices. As the Club nears the finish line with a well that has been installed near the maintenance compound, it has become apparent that the production from that well will only supply a fraction of the water required for the golf course, and that City water will once again become essential to the Club's survival. The Club is also currently investigating the possibility of installing of a second well.

We respectfully request that the City of Milpitas ("City") provide potable water service for irrigation at the Club.

Background on Summitpointe Golf Club:

By way of background, we want to take this opportunity to provide the City with some information about the Club. For the last 20 years, American Golf and the Club have established close ties with local communities to provide affordable and enjoyable public golf experiences for the residents of the City and nearby communities. The following is a list of examples of the Club's involvement in and contributions to the communities:

- The Club is a proponent of local talents and recruits and hires within its communities. Over 80% of the Club's workforce is made up of residents from Milpitas and nearby communities of San Jose and Fremont. Some of these coworkers have been employed with the Club since the mid-1990s.

- The Club is an advocate of giving back to the communities it serves. Over the years, the Club has raised hundreds of thousands of dollars for charities. The Club has been a huge supporter for various cancer foundations and the Jordan & Kyra Memorial Foundation, a non-profit organization which funds cutting-edge search in pediatric cancer. The Club also supports charities that are aimed at enriching and enhancing the local communities. More recently, the Club has raised funds for the Milpitas School District and the First Tee of San Jose. The Club is also the home course for the Milpitas High School golf team and the practice course for the Piedmont High School golf team.

- The Club has been committed to making golf affordable and accessible for people of all ages and backgrounds. To that end, the Club strives to promote the game of golf for females and is home to a women's league, which holds regular league events and tournaments at the Club. Additionally, the Club is home to a junior program which provides local youths an opportunity to learn and play golf in a fun and non-intimidating environment. Seniors can also take advantage of special discounted rates on fees when they play at the Club. Finally, the Club ensures the opportunities for golfers with disabilities to engage in and enjoy the game of golf at the Club by providing disabled golfers with single rider cart upon request, disability flags, and reasonable accommodations that disabled golfers may request.

- The Club also offers non-golf services to the local communities by providing meeting venues, catering services and dining facilities for local businesses and residents, The Club's restaurant is also a place where local residents and families can get away from the hustle and bustle to enjoy the scenic view and tranquil environment the Club offers.

- The Club's activities also generate significant local sales tax dollars.

Summitpointe's Water Management:

The Club is well aware of and appreciates the challenging water supply conditions presently facing water utilities across California. Responsible and proper irrigation management has been and continues to be one of the most critical components to the Club's operations. During the current drought condition, the Club is committing to be even more conscientious of its water use. The following are examples of water conservation measures the Club has already implemented:

- Update the sprinkler heads to provide more efficient water usage by allowing the Club to adjust watering from full circle to half circle perimeter and by allowing shorter runtimes on the irrigation cycles.

- Reduce irrigation in the out of play/rough areas.

- Use wetting agents wherever appropriate, and increased cultural practices.

- Regular inspection of irrigation systems for leaks and irregularities.

- Train all co-workers on water conservation efforts.

- Established a Drought Emergency Plan

- Extensive irrigation system upgrades including GPS mapping, updated programming, and create a new Toro Site Pro data base.

Moving forward, the Club will address the following water conservation methods and best management practices:

- Investigate the possibility of a second well
- Take part in the Turf Removal Rebate Program
- Continue to pursue the possibility of recycled water
- Use only low-water use plant material in non-turf areas
- Continue irrigation system upgrades with installation of isolation valves

The Club requires 200 acre-feet of water annually for its irrigation. The Club is requesting approval to access City water for irrigation as needed. The Club would only use water from the City if and at any time that the water supply from the District is suspended and only the amount required over and above our own water sources (wells). During the time the Club uses water from the City, the Club will continue to use the above-mentioned water conservation measures, as well as explore other best practices, to ensure the utmost responsible use of this precious resource. Moreover, the Club is presently exploring all viable long term options for additional backup water supplies, including but not limited to, a possible recycled water source.

The Club has made, and continues to make, significant investments in order to provide the benefits to the local communities described above. In order to maintain the community benefits and to protect its investment, the Club requests that the City provide the Club with potable irrigation supplies. In the event that the Club's deliveries from the District are unavailable, without City water supplies or another suitable source as a backup, the Club risks losing its irrigated turf and ability to operate its business, which will have an adverse impact to the services the Club offers the local communities and the coworkers who are employed by the Club.

Thank you for your consideration in this matter. Please let us know whether we can provide any additional information. We look forward to hearing from the City soon.

Sincerely,

SUMMITPOINTE GOLF CLUB

Rob Billings
General Manager

April 15, 2015

Thomas Williams, City Manager
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035

Subject: Request for Temporary Water

Dear Mr. Williams:

First of all I want to thank you and the distinguished Mayor and Milpitas City Council for the assistance that was provided to Spring Valley Golf Course (SVGC) last year by accommodating our temporary request for water. Our commitment to the City was to only use the 27 acre-feet allocation if absolutely necessary. Through conservation, revitalization of an old well and pond/lake storage reserves we were able to honor this commitment and did not utilize the City allocation.

Unfortunately this extended drought has settled in for another year and Spring Valley is confronted with even greater water challenges than those of 2014. Surface water diversions to Sandy Wool Lake ceased on July 10, 2014 and to survive last year's irrigation season, Ed Levin Park and Spring Valley Golf Course were forced to deplete Sandy Wool Lake storage reserves. Currently the surface water diversion from Santa Clara Valley Water District (SCVWD) remains unavailable.

Santa Clara County Parks (SCCP) and SVGC are working very closely with multiple stakeholders to identify not only short-term solutions to survive the 2015 irrigation season but also secure long-term sustainability by supporting and participating in the City of Milpitas's efforts to extend recycled water pipelines.

Attached you find our April 14, 2015 Appeal to SCVWD For Surface Water diversion. This document provides a comprehensive review of our irrigation practices, potential alternative water sources – short and long term, potential economic impacts and our current needs to survive the 2015 season. We expect to receive a ruling from the SCVWD by April 24, 2015.

In the mean time, we would like to solicit assistance from the City of Milpitas for a Request for Temporary Water once again. The details of this request are consistent with last years' and are detailed below.

- 27 acre-feet total not to exceed 100 GPM
- Diversion would not exceed 60 days and begin only when absolutely necessary and timing approved by the City of Milpitas
- Please review attached Potable Water Point of Connection Illustrative Plan and the Water main Extension Plan

The partnership that we have developed with the City of Milpitas is greatly appreciated and cannot be understated. We are confident that collective efforts to survive this current drought will result in long-term sustainability through recycled water opportunities that will benefit the City of Milpitas, the County of Santa Clara and Spring Valley Golf Course.

Respectfully,

Greg Jetter
Spring Valley Golf Course

cc: Robb Courtney
John Patterson
Aaron Baker

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:	400-2940	$600,000	400-3999	$600,000
☒ Budget Appropriation	320-2940	$200,000	320-3942	$200,000
☐ Budget Transfer	401-951-7126-15-3899	$600,000	401-951-7126-1-4800	$80,000
	401-951-7126-15-3840	$200,000	401-951-7126-2-4800	$515,000
			401-951-7126-4-4800	$25,000
			401-951-7126-7-4800	$180,000

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

Background: The State of California is experiencing a severe multiple year water drought. On April 1, 2015, the Governor issued a Proclamation declaring a Continued State of Emergency due to severe drought conditions and requiring a statewide 25% reduction. The State Water Resources Control Board (SWRCB) has assigned a tentative specific conservation goal of 12% to Milpitas and adopted severe penalties for cities that fail to meet the conservation goal. Water retailers such as Milpitas, are also subject to severe penalties if they fail to perform mandated tasks, such as adopting conservation measures, responding to water waste complaints, and reporting.

The Santa Clara Valley Water District (SCVWD) is experiencing a severe water supply shortage. SCVWD Directors requested a water conservation target of 30% and implemented a penalty of 10 % for water used above contract amounts. San Francisco Public Utilities Commission (SFPUC) requested a water conservation target of 10%. Last year, the City Council called for a 20% reduction in water use and the community achieved an average reduction of 9.4% in 2014, compared to 2013. Therefore, staff recommends a public outreach goal of reducing water use by **30%** to achieve our required reductions by the various agencies (SWRCB, SCVWD and SFPUC) listed above.

The SWRCB also adopted Resolution No. 2015-0013 for Emergency Regulations for Statewide Urban Water Conservation and recently developed additional regulations for conservation and enforcement of conservation. The State recognizes that outdoor water use is discretionary and must be significantly reduced. The mandates require water retailers, such as the City of Milpitas, to implement their Water Shortage Contingency Plan and submit monthly reporting. Water retailers are required to educate customers and reduce water consumption. The City's Water Shortage Contingency Plan is included in the 2010 Urban Water Management Plan and was adopted by Council on June 7, 2011. The City moved from Stage 0 to Stage 2 on August 19, 2014. At this time, Staff recommends remaining at Stage 2, which requires mandatory water conservation of 20-35%. A memo comparing conservation efforts by other cities' is included in the Council packet.

Water Conservation Program: Staff recommends implementing a Water Conservation Plan (Plan) to achieve the goal of 30% consumption reduction and maintain compliance with State law. The proposed Plan includes several activities as described in the table below.

#	Description	Estimated City cost	Water saved per year (in HCF, 748 gallons = 1 HCF)	Timeline to start
1	Add two technicians to respond to water waste complaints (response is State-mandated)	$110,000	NA	1 month
2	Computer programming for State-mandated reports and revised billing	$100,000 utility billing $50,000 work order reporting	NA	2 months
3	Conservation Plan staff support	$270,000	200,000 to 800,000 (10 to 30% range depending on plan selected)	1- 3 months

4	Convert City irrigation sites adjacent to the recycled water pipeline	$200,000 (approx 10 sites	12,000	3-6 months
5	Outreach	$30,000		1-2 months
6	Install 4 new recycled water fill stations	$40,000		1-2 months
	Total	$800,000		

The total cost of the proposed water conservation program is estimated at $800,000 for the first year. Staff recommends creating a new CIP Project 7125 titled Water Conservation Program to track the costs. Budget appropriations of $600,000 from the Water Fund and $200,000 from the Park Fund are required to provide the needed funds.

Hillside Golf Courses: Two hillside golf courses in the Milpitas foothills received water supply termination notices from SCVWD. The golf courses appealed the SCVWD decision and are receiving smaller temporary allocations, contingent upon their continuing effort to work with the City and SCVWD to implement a permanent recycled water supply. The golf courses ha submitted written requests to Milpitas for temporary emergency water supply (copies are included in the Council packet). Trucking of recycled water has been presented to the golf courses as another option, and was found to be expensive and infeasible due to the needed volume of water. Groundwater well capacity in the hillside is limited and provides only a portion of the needed irrigation supply. The golf courses have implemented an efficient irrigation usage plan. A green belt in the Milpitas hillsides provides a buffer against wildfires. Unfortunately, the State's recent drought program mandates water use reduction in the City of Milpitas and fines are significant. As Milpitas must implement a program to meet the required reduction, there is insufficient water supply for the golf courses. At this time, Staff's recommendation is to deny the requests from the golf courses for temporary emergency water supply. Staff has informed the Gold Courses of the recommended denial; however staff is pursuing the extension of recycled water to the courses in conjunction with Spring Valley Summit Pointe.

Rationing Program: A rationing program is necessary to achieve a greater reduction in water consumption. Staff evaluated the various rationing programs listed in the Water Shortage Contingency Plan and recommends a hybrid approach. The existing residential rate structure has been effective, with residential accounts achieving a reduction of 7% overall (30% in the top tier). Consumption in the higher tiers represents outdoor usage, which must be reduced. A penalty equivalent to 10% of the fourth tier unit rate would be assessed on all usage in the fourth tier in addition to the regular unit rate. If the residential customer has zero usage in the fourth tier, then no penalty would be assessed. Residential customers who previously adopted conservation habits are not penalized. Commercial, industrial, and institutional indoor accounts would be assigned an allotment equal to 90% of their corresponding 2013 billing period usage. Usage equivalent to and below the allotment would be charged the regular unit rate. Usage above the allotment would be charged both the regular unit rate and a penalty equivalent to 10% of the regular unit rate. Irrigation accounts would be assigned an allotment of 40% of their corresponding 2013 billing period usage. Usage equivalent to or less than the allotment would be charged the regular unit rate. Usage above the allotment would be charged at both the regular unit rate and a penalty equivalent to 10% of the regular unit rate. Since most non-residential customers have separate irrigation accounts, this method achieves the State goal of reducing outdoor usage with minimal impact to businesses, jobs, and the overall economy. Recycled water accounts are exempt from the rationing program. The Director of Engineering would establish allotments for sites without 2013 consumption history based upon similar uses. There is no appeal process planned.

Conservation measures:
On August 19, 2014, the City Council adopted Emergency Ordinance No. 240.2 to address the requirements at that time. They included these measures:

- Eliminates use of potable water for cleaning of any hard surfaces, such as sidewalks, streets, buildings, and parking lots
- Eliminates use of potable water for construction purposes such as dust control and compaction
- Eliminates construction of new swimming pools or ponds or initial filling of any swimming pool or pond (refilling due to evaporation or repairs is acceptable)
- Eliminates use of potable water for cleaning, filling, or maintaining levels in decorative fountains
- Eliminates use of potable irrigation of golf courses except greens and tees area
- Eliminates unlimited use of potable water for irrigation and reduces irrigation to 2 days per week, between 8 am to 8 pm, adjusted for Daylight Savings
- Defers installation of new landscape unless served by recycled water

Staff reviewed the new State regulations and prepared Urgency Ordinance No. 240.3 to amend Chapter 6 of Title VIII of the Milpitas Municipal Code (Water Conservation Ordinance) to implement the following additional potable water use restrictions and/or modifications to existing restrictions:

- Prohibit the application of (potable water) to outdoor landscapes during and within 48 hours after measurable rainfall.
- To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

- Newly constructed homes and buildings must be designed with drip or microspray irrigation systems. (And no new planting shall be installed during the declared drought as stated in VIII-5-5.07 even if the project was approved prior to adoption of this ordinance).
- Prohibit the application of (potable water) to street medians containing ornamental turf.
- Eliminates hydrant flushing, except for health and safety reasons.
- Clarification of use of (potable water) for watering or irrigation of any plants, lawn, grass, landscaping or turf areas between hours of 8:00 am and 8:00 pm, adjusted for Daylight Saving hours and for no more than two (2) days during any seven (7) day period. The days of the watering shall be:

  Odd address - Monday and Thursday
  Even address - Tuesday and Friday
  No address - Monday and Thursday

  Short periods intended for timer adjustment and repair of irrigation system are exceptions to time/day restriction.
  In addition, City Council authorized the City Manager or designee to approve a variation of the time/day schedule as submitted by the customers that satisfies the required declared reduction.
- Require the use of spa and pool covers (when not in use to prevent evaporation loss).
- Exceptions to the prohibitions enumerated may be granted in the discretion of the City Council.
- Non-compliance with water use restrictions of Title VIII, Chapter 6 is subject to Title I-1-14.09, Penalty Provisions and/or V-500-08, Administrative Citation.

A key revision is the requirement that irrigation shall take place during daylight hours. The purpose is to enable easy confirmation of watering on incorrect days. This requirement is being adopted by most of the water retailers in the South Bay and regional outreach will be performed.

The potable water prohibitions are not applicable to fountains and irrigation systems that use non-potable water such as recycled water landscaped areas. If recycled water is not available, potable water prohibitions are not applicable to landscape areas and green roofs that are required pollution treatment measures as defined in Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit No CAS612008, C.3 Provision.

This urgency ordinance requires a vote of 4/5 to pass and becomes effective upon adoption. A copy of the SWRCB resolution and proposed ordinance is included in the Council packet. A public hearing notice was published in the Milpitas Post.

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

Alternatives: Failure to adopt these additional conservation measures may result in higher water consumption by the community and/or non-compliance of the mandated conservation levels could result in the State imposing financial penalties up to $10,000 per day on the City.

Fiscal Impact: Budget appropriations of $600,000 and $200,000 are required form the Water Fund and Park Fund, respectively, into the proposed CIP No. 7126 titled Water Conservation Program.

Recommendations:

1. Open the public hearing to receive comments.
2. Move to close the public hearing.
3. Adopt a Resolution to (i) Approve a Water Conservation Program, (ii) Approve a new capital improvement program project No. 7126 titled Water Conservation Program; (iii) Approve a budget appropriations of $600,000 from the Water Fund and $200,000 from the Park Funds, and (iv) Deny golf courses' request for temporary emergency water supply.
4. Following the City Attorney's reading of the title, move to waive the reading beyond the title of Ordinance No. 240.3.
5. Adopt by at least four-fifths vote Urgency Ordinance No. 240.3 adding Supplemental Water Use Restrictions Provisions and Penalties as Required by State law to Chapter 6 of Title VIII of the Milpitas Municipal Code to be effective immediately.

☒ **Check if City Council Approval required.** **Meeting Date**: June 16, 2015

Requested by:	**J Leung, Associate Civil Engineer**	**Date:** June 5, 2015

Reviewed by: Jeff	**Finance Director:** Emma Karlen	**Date:** 6/8/15
Approved by:	**City Manager:**	**Date:**
Date approved by City Council, if required:	**Confirmed by:**	

FI/24786/V

Form 30-222 (Rev. 1/92)

2A

City of Milpitas

Request for Proposals for Solid Waste, Recyclables and Organics Collection, Processing and Disposal Services

DRAFT FOR CITY COUNCIL REVIEW

HF&H Consultants, LLC

Released June 26, 2015

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CITY OF MILPITAS, CALIFORNIA
REQUEST FOR PROPOSALS FOR
SOLID WASTE, RECYCLABLES AND ORGANICS
COLLECTION, PROCESSING AND DISPOSAL SERVICES

Proposal Information: The City of Milpitas, California is requesting submittal of separate proposals for:

1. Collection of solid waste, recyclable materials, and organic materials, the processing of recyclable materials and organic materials, street sweeping services, and collection and processing of construction and demolition material[1], and;
2. Disposal of solid waste (and transfer if proposed).

Proposers may submit a proposal for only one of the two categories of services identified above, or may submit separate proposals for both category of services.

Copies of this Request for Proposal (RFP) may be obtained online at www.hfh-consultants.com/Milpitas or by written request sent to MilpitasRFP@hfh-consultants.com.

Proposer Questions and City Responses: All proposer questions must be submitted in writing via email to HF&H Consultants, LLC at MilpitasRFP@hfh-consultants.com. **Do not seek to communicate with City staff regarding the RFP package or RFP process.** Proposer questions and City responses will be issued as addenda, without identifying the party submitting the question.

Register to Receive Future Correspondence and Announcements: If you are interested in receiving future correspondence and announcements related to the City's RFP process, please email HF&H Consultants, LLC at MilpitasRFP@hfh-consultants.com to request that your name be placed on the list of interested parties and with your request submit the executed statement of compliance with the City's Process Integrity Policy (see Attachment 1) as described in Section 4.3.1. Potential proposers must submit the request to register and provide the completed Process Integrity Policy form no later than the date shown Table 1-1.

Receiving the RFP Package, RFP Addenda and Other Updates: Individuals must register, provide complete and accurate contact information, and submit a signed Process Integrity Form. Registered proposers will also receive email notification of the issuance of addenda, or of any other updates to the RFP Package. All relevant documents will be posted online at www.hfh-consultants.com/Milpitas.

Compliance with City's Process Integrity Policy: Proposals will only be accepted from parties that have fully registered including submittal of the executed Process Integrity Policy form. The Process Integrity Policy form must be submitted by the deadline stated in Table 1-1. Any interested party that violates the terms of the Process Integrity Policy may, at City's sole discretion, be disqualified from the City's RFP process.

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[1] Construction and demolition debris collection and processing is currently not a franchise service, but the City is considering adding it to the franchise.

Schedule and Schedule Revisions: Table 1-1 in Section 1 provides the schedule. A revised Table 1-1 will be issued any time there is any change to the schedule.

Voluntary Pre-Proposal Meeting: All proposers are invited to attend a pre-proposal meeting on the date and time, and at the location shown in Table 1-1.

Proposal Submittal: All proposals must be received by 3:00 p.m. (Pacific Standard Time) on the date shown in Table 1-1. Proposals received after this time and date may be rejected. Postmarks will not be accepted as proof of receipt. Proposers shall mail or hand-deliver proposal packages to:

Mary Lavelle, City Clerk
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
(408) 586-3000 (this phone number provided solely for the use of preparing delivery waybill)

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1. City's Process Integrity Policy
2. Franchise Agreement for Collection and Processing Services
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4. Cost Proposal Forms
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SECTION 1: INTRODUCTION

1.1 Overview

The City of Milpitas, California is requesting submittal of separate proposals for the following:

1. Collection Proposal Collection of solid waste, recyclable materials, and organic materials generated by residents and businesses located in the City, processing of the recyclable materials and organic materials, street sweeping services, and potentially collection and processing of construction and demolition material. These services will be provided under a new Franchise Agreement that will commence on September 6, 2017 with a base term of 10 years, ending December 31, 2027.
2. Disposal Proposal Disposal of the solid waste, transfer if proposed, and drop-off options for residents. These services will be provided under a new Disposal Agreement that will commence on September 6, 2017 with a base term of 20 years, ending December 31, 2037.

The City service area includes approximately 13,500 single-family accounts and 560 commercial and 1,000 multi-family and commercial accounts. The City's General Plan provides for substantial infill growth over the coming years. Republic Waste Services, Inc. (Republic) currently provides collection and disposal services in Milpitas through several agreements with the City that will expire on September 5, 2017.

The key goals for both Agreements are to provide cost-effective, high quality service for residents and businesses in the City and to ensure full compliance with the State of California's (State) diversion mandates.

Collection proposers are required to submit cost proposals with specified for costs for each customer type and line of business; the City will negotiate final City fees and rates with one or more finalists. Disposal proposers are required to submit rate proposals for per-ton compensation for disposal and transfer (if needed) services. Per-ton rates for the selected disposal contractor will be included in the final rates.

The following subsections present: the goals and objectives of the City; an overview of this RFP; a description of the RFP's organization; the RFP schedule; and, a list of readily available background information.

Note that many terms used in this RFP are defined in Exhibit A to the proposed Franchise Agreement and/or Exhibit A to the proposed Disposal Agreement, which are provided in Attachments 2 and 3 of this RFP, respectively.

1.2 City's Goals and Objectives

Collection Proposal: The City is requesting proposals from companies that place a high priority on providing high quality and cost effective service, and have demonstrated experience providing solid waste, recyclable materials, organic material, street sweeping services, and construction and demolition debris collection and processing services comparable to those described in this RFP, under a franchise agreement with a community comparable to the City.

Disposal Proposal: The City is requesting proposals from companies that have demonstrated experience providing safe and environmentally acceptable disposal services comparable to those described in this RFP.

The City's goals and objectives for both proposals are to:

- Provide service at reasonable rates that are effectively managed over the term of the Franchise Agreement and Disposal Agreement to minimize future rate increases;
- Maintain high standards for customer service and convenience;
- Meet State and local diversion requirements;
- Minimize environmental impacts of the collection operations;
- Work with a contractor that cooperatively delivers service to customers and City, and with flexibility in addressing issues as they arise;
- Engage a collection contractor that is a strong community citizen by supporting the City, its schools, community groups, and business community; and,
- Work with a collection contractor that offers City access to routing, customer service, customer account, and tonnage data through use of integrated technology systems.

1.3 RFP Overview

Collection Proposals

Collection Proposals will provide collection services, transfer services as necessary to deliver material to the proposed recyclables and organics processing facilities, assured capacity for processing City materials at recyclables and organics processing facilities, and street sweeping services. The RFP provides Collection Proposers with an assumed distance for transporting collected solid waste off-route for delivery to the Disposal Contractor.

Collection Proposals will include a "Base Proposal" that covers collection services and programs that are very similar to the current scope of services as well as several "Alternative Proposals" that address new programs for residents and businesses. Key Alternative Services include the addition of single family food scraps collected with yard trimmings and collection and processing of C&D materials, a service currently provided through a nonexclusive system. The technical and cost proposals for the Alternative

Proposals will be evaluated and used by the City to determine if one or more of the alternative services will be included in the final scope of the Agreement, as well as to allow ratepayers a means for understanding any added cost that may result from pending diversion programs mandated by AB 1826.

Disposal Proposals

Disposal Proposals will provide the City with assured disposal facility capacity, and transfer and transport services as necessary to reach the proposed disposal facility. Disposal Proposers are also requested to offer one or more options for "free drop-off" by City residents at the proposed transfer or disposal facility, and/or at a convenient local location.

1.4 Organization of RFP

This RFP is organized into six sections as follows:

Section 1 provides a brief introduction to the RFP.

Section 2 provides information on current conditions.

Section 3 presents the scope of requested collection and processing services.

Section 4 provides the RFP policies, conditions, and submittal process.

Section 5 describes the collection proposal submittal requirements.

Section 6 describes the disposal proposal submittal requirements.

Section 7 outlines the proposal evaluation process and criteria by which the proposals will be evaluated.

The attachments include the draft Franchise Agreement, draft Disposal Agreement, proposal forms, and the Process Integrity Policy form.

1.5 RFP Schedule

The key activities and completion dates for the RFP process are provided in Table 1-1. The RFP process is described in detail in Section 4. All questions regarding the RFP must be submitted in accordance with guidelines specified in Section 4.3.

Table 1-1
RFP Schedule tentative dates; may be revised before release

Any changes in activities or dates will be transmitted to proposers in the form of a revised Table 1-1.

ACTIVITY	COMPLETION DATE/TIME FRAME
Notification regarding RFP availability begins; registration process begins	June 17, 2015
City releases RFP for Collection and Processing Services	June 26, 2015
Deadline for submittal of written questions before the pre-proposal meeting	July 24, 2015
Pre-proposal meeting at Milpitas City Hall	**July 28, 2015, 10AM – 12PM**
City issues addendum, as necessary addressing questions received at or prior to the pre-proposal meeting.	August 7, 2015
Deadline for submittal of Process Integrity Policy Form and for registering to receive future correspondence and announcements	September 4, 2015
Deadline to object to the form of the RFP	September 11, 2015
Deadline to submit additional written questions	September 11, 2015
City issues addendum, as necessary addressing additional questions.	September 18, 2015
Proposers submit proposals	**October 29, 2015**
Disposal: City conducts interviews with one or more proposers, as needed	TBD
Disposal: City Council selects disposal contractor	TBD
Disposal: City negotiates with disposal contractor	TBD
Disposal: City Council approves negotiated Disposal Agreement	TBD
Collection: City conducts interviews with one or more proposers, needed	TBD
Collection: City Council selects collection and processing contractor	TBD
Collection: City negotiates with collection and processing contractor	TBD
Collection: City Council approves negotiated Franchise Agreement	June 2016
Contractor(s) commences services	September 6, 2017

SECTION 2: CURRENT CONDITIONS

2.1 Introduction

This Section 2 provides information including:

- General sources of website information for the City of Milpitas (City) and Republic Services Inc. (Republic).
- Current and projected demographic data for the City.
- Summary information regarding current solid waste services.
- Tonnage and account data related to current solid waste services.
- Current diversion.
- Current customer billing.
- Current services information available as downloads from the RFP website.

2.2 Data Disclaimer

The information contained in this Section 2 is provided for informational purposes only, its accuracy has not been independently verified, and its use is in no way intended to substitute for proposers' independent evaluation of the City's needs and how each proposer may best meet them. Each proposer should take whatever steps it believes are necessary to reasonably understand the service conditions and requirements of the City when preparing its proposal. Summary information presented in table format is provided for proposer convenience only, and proposers should refer to each specifically cited source of the information and the materials available for download as listed in Table 2-14. Each proposer, in submitting a proposal agrees to indemnify and hold the City harmless from any and all claims of damages incurred by the proposer arising from or related in any way to its reliance on this data.

2.3 General Information

Table 2-1 lists sources of background information for the City. Proposers are encouraged to view the City's and Santa Clara County's websites for additional useful information.

Table 2-1
Readily Available Background Information

Resource	Relevant Content	Location
City of Milpitas website	• General information • General Plan • Municipal Code, Chapter 200 of Title V • Current rates	http://www.ci.milpitas.ca.gov/
Santa Clara County website	Information on recycling and special waste programs in Santa Clara County	http://www.sccgov.org/sites/scc/Pages/default.aspx
Milpitas Chamber of Commerce	Information on doing business in the City	http://www.milpitaschamber.com/

2.4 Demographic Data

The City revised its General Plan in 2008 with significant projected long-term infill growth. In recent years, developers have proposed a number of projects that, if approved and built could add a significant number of residential and small commercial solid waste accounts. Development activity has lagged in recent years due to broad economic conditions, but is now increasing. See Section 3.2.1 for discussion of the challenges of infill growth and City expectations of the collection contractor.

Table 2-2 presents residential data for Milpitas, with projections reflecting population growth of 47 percent from 2010 to 2030. The City has an average of 3.34 persons per household, the second highest population density in Santa Clara County (County).

Table 2-3 and Table 2-4 provide housing-related information. As provided in Table 2-3, compared to other cities in Santa Clara County, Milpitas now has a high number of single family housing units vs multi-family units, relative to its population and the total housing units provided in Table 2-2. However, with a relative emphasis on multi-family growth the ratio will change. Milpitas has three mobile home parks, with about 419 units. Mobile home residents have specific rates.

Table 2-4 provides a sampling of City data regarding larger apartment and condo/townhome complexes based on number of units. The information is culled from the cited data source, a sortable Excel file and is not in any specific order.

Table 2-2
City Population and Household Data

	Population	Households*	Persons per Household
2010	66,790	19,184	3.34
2020	82,300	n/a	n/a
2030	98,100	n/a	n/a

Sources: 2010 data is from the 2010 Census. 2020 and 2030 population projections are from City of Milpitas General Plan.
**Occupied Housing Units. General Plan does not provide projected units.

Table 2-3
Household Data

Single Homes	Two to Four Units	Five Plus	Mobile Homes
15,246	1,460	3,914	419

Source: CA Department of Finance Table E-5 City/County Population and Housing Estimates 1/1/2015.

Table 2-4
Sampling of Larger Apartment/Townhome Complexes

Apartment Name	Address	Units
Aspen Family Apartments	Mihalakis Street	102
The Paragon	Ede Lane, Snell Place, Bettencourt Way	147
Luna At Terra Serena	South Abel Street	319
Hillcrest	Calle de Cuestanada, Calle Mesa Alta, Calle Oriente, Calle Vista Verde, Cuesta Drive, Monte Ct.	209
Dry Creek Apartment Homes	Dempsey Ave	137
Casa Grande	Lynn Ave	84
DeVries Senior Housing	North Main Street	103
133	North Temple Drive	88
207-399	North Temple Drive	70
Cerano Apartments	Murphy Ranch Road	373
Centria	South Main Street	141
Park West	South Main Street	72
Reflections	Pond Court	68
Victorian Square	Milpitas Blvd.	96
Spinnaker Pointe Apartments	Dixon Landing Road	220
Sunny Hills Apartments	Sunny Hills Drive	171
Monte Vista Apartments	South Main Street	332

Apartment Name	Address	Units
The Crossing at Montague	East Capitol Ave	472
Mill Creek Apartments	Dixon Landing Road	514
Terrace Gardens	Beresford Court	155
Dixon Landing Townhomes	N Abbot Ave	224
Parc Place	Park Place Drive	293
Park Metro	Cloud Walk, Wind Song, Rain Walk, Sun Song, Rain Dance, Moon Shadow Dr., Moon Dance, Wind Walk, Autumn Wind, Fire Walk, etc.	382
Apex Apartments	South Abel Street	366
The Avenue	South Main Street	202

Source: ”MFD Units 7187 Mail Address April 2015”. Provided to HFH April 2015

2.5 Description of Current Services

Overview

Chapter 200 of Title V of the Milpitas Municipal Code has extensive detail regarding current services. Residents and businesses are required to subscribe to, and pay for solid waste collection services through the City’s franchised collector. Section V-200-3.40 of the Milpitas Municipal Code states: “No more than one week's accumulation of putrescible solid waste shall be kept or be permitted to remain upon any premises in the City. At least once each week all putrescible solid waste produced, kept or accumulated within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.” Republic collects solid waste, recyclable materials, and organic materials from residents and businesses. The City currently performs single-family billing services as part of its utility billing services; multi-family and commercial billing is provided by Republic.

Republic collects solid waste and recyclable materials from City facilities and public litter and recycling containers. Current City facilities are listed in Exhibit F of the Franchise Agreement. The City also delivers material generated through routine maintenance of City parks, fields, and streets to Republic’s Newby Island Landfill, Recyclery and Compost Facility (Newby Island). Republic provides 500 yards of hauling and disposal services for special cleanups and or emergency disposal, and confidential City document shredding as requested by the City. Republic provides containers for up to six City-sponsored events at no charge.

Temporary debris box service is provided through a nonexclusive system that presently has thirteen collectors. As discussed in Section 3, the City is considering incorporating this service into the Franchise Agreement. The template agreement is available as provided in Table 2-14.

Republic delivers all materials for processing or disposal to the Newby Island. City residents and small businesses can self-haul small volumes of household hazardous waste and hazardous materials to one of the County's household hazardous waste facilities.

Current Service Detail

Table 2-5 summarizes the City's current solid waste, recyclable materials, and organic materials collection services provided to single-family, multi-family, and commercial customers, as well as new multi-family and commercial organics collection services mandated by AB 1826 that will begin in 2016 under the current agreement. See the current agreement (Table 2-13) and the Municipal Code for a full description of current services.

A key feature of the current system is that single family customers are provided unlimited collection of solid waste, and have the option to use their own containers or to rent a 96 gallon cart for solid waste. As described in Section 3, the City is seeking proposals both to provide single family solid waste service similar to the current approach, as well as a conventional cart-based system for solid waste as well as recyclables and organics.

Table 2-5
Current Single-Family, Multi-Family and Commercial Collection Services

Service	Single-Family	Multi-Family	Commercial
Solid Waste	• Weekly, curbside collection • 96-gallon carts provided by contractor at customer option with a monthly rental fee; additional carts available for an additional fee or, • Unlimited number of 32-gallon customer-provided cans or bags	• 96-gallon carts, 1 to 8 cubic yard bins provided by contractor, compactors for high density developments	• 32- and 96-gallon carts, 1 to 8 cubic yard bins, 10 to 50 yard drop boxes provided by contractor and compactors in a range of sizes
Recyclable Materials	• Weekly, curbside collection • Commingled (single-stream) system using containers provided by contractor • 32-*, 64-, or 96-gallon cart provided by contractor	• Current fee of $4.39/unit/month • Commingled system using 32-**, 64-, 96-gallon carts, 1-6 yard bins, or 8-40 yard drop boxes provided by contractor • 8 to 40 yard compactors can be rented from contractor or third-party	• At least once every 30 days (60 days for compactors) collection or more frequent • 32- and 96-gallon carts, 1 to 8 cubic yard bins, 10 to 50 yard drop boxes provided by contractor • 8 to 40 yard compactors can be rented from contractor or third-party • 10 to 50 yard drop boxes with minimum of 2.5 hauls per month • Deskside recycling boxes

Service	Single-Family	Multi-Family	Commercial
Yard Waste	• Weekly, curbside collection • 96-gallon cart provided by contractor • 32-gallon customer-provided containers may be set out with stickers from contractor • Extra material may be bundled and placed next to cart • Holiday trees may be placed next to solid waste containers	• Yard waste collection program to begin April 2016 to comply with AB 1826 • Holiday trees may be placed next to solid waste containers	• Yard waste collection program to begin April 2016 to comply with AB 1826 • Holiday trees may be placed next to solid waste containers
Food Scraps	None	None	• Pilot scale program with ten businesses • Food scrap collection program to begin April 2016 to comply with AB 1826
Backyard or Sideyard Service	• Provided to senior citizens or disabled at no additional cost	Not applicable	Not applicable
Other	• Two community-wide bulky item collection events per year at no charge • Used motor oil and oil filter collection provided curbside weekly at no charge • Household Dump Day every 2nd and 4th Saturday of each month for non-commercial solid waste at Newby Island Landfill*** • Two annual on-call bulky item pickups for seniors	• Three on-call bulky item collection clean-ups per year at no charge • Household Dump Day every 2nd and 4th Saturday of each month for non-commercial solid waste at Newby Island Landfill***	• Will provide free monthly report of volumes of material collected upon customer's written request

* 32 gal option for seniors/ high-density households
** 32 gal option for mobile homes
*** Except when Christmas and New Year's falls on a Saturday

2.6 Tonnage Data

Table 2-6 summarizes City information provided by Republic for tonnages of material collected by year from the service area.

Table 2-14 provides a summary of 2014 information reported by the temporary debris box haulers. For 2014, tonnage data collected by the City from the nonexclusive haulers indicates that the temporary debris box system resulted in collection of in excess of 9,460 tons. However, three of the haulers including Republic did not report tonnage data. Republic indicates that the roll-off data reported in its franchise annual reports includes its temporary debris box tons.

Table 2-6
Franchise Tonnage from Service Area by Current Contractor, by Calendar Year

	2012	2013	2014
Residential Solid Waste (Includes MUD)	20,181	18,855	18,938
Commercial	23,824	26,921	27,453
Industrial (Roll-Off)	10,793	11,015	12,109
Self-Haul	2,068		2,443
Household Dump Day	3,757		4,156
Total Solid Waste	**60,623**		**65,099**
Residential Single Stream (Includes MUD)	4,718	4,656	4,791
Commercial Single Stream	3,921		4,387
Industrial R.O. (Includes Wood)	3,487	4,584	4,386
Total Recyclable Materials	**12,126**		**13,564**
Residential Organic Material	4,912	5,095	4,807
Commercial (Pilot Program)*			452
Self-Haul			
Total Organic Material			
Total (tons)			
Bulky Goods (#)	136		226

Source: Republic's Annual Reports to the City for years 2012-2014.
*Commercial Organics Tonnage reported by Republic per 5/7/2015 email to City.

2.7 Account Data

Tables 2-7 through 2-12 provide customer account information:

- Table 2-7 provides information for single-family collection for all three streams.
- Table 2-8 provides information for multi-family and commercial solid waste collection.
- Table 2-9 provides information for multi-family and commercial recycling collection.
- Table 2-10 provides information for collection of City containers.
- Table 2-11 provides information for collection of roll-off materials.
- Tables 2-12 and 2-13 provide information for the commercial food scrap pilot program.

Table 2-7 includes smaller multi-family complexes receiving cart service. (See Section 3.2.2 for discussion of "Single-Family Style" service.)

Single-family account information is summarized in Table 2-7.

Table 2-7
Single-Family Carts in Service (April 2015)

	Solid Waste	Recycling*	Yard Waste*
Customer Owned Can/Bag	7,429		
Rented 64-gallon cart	18		
Rented 96-gallon cart	6,198	13,780	12,596
Total	**13,645**	**13,780**	**12,596**

Source: "Garbage Cart Rented Per Location" provided to HFH April 2015
*Provided by Republic per 5/7/2015 email to City.

Table 2-8
Commercial Solid Waste Cart and Bin Service (April 2015)

Multi Family and Commercial Solid Waste Count (# of Containers)								
		Collections per Week						
		1	2	3	4	5	6	TOTAL
Container Size	32 gal	7	0	0	0	0	0	7
	64 gal	4	0	0	0	0	0	4
	96 gal	72	0	0	0	0	0	72
	1 cy	108	5	0	0	0	0	113
	1.5 cy	7	1	0	0	0	0	8
	2 cy	175	28	19	0	1	2	225
	2.5 cy	1	0	0	0	0	0	1
	3 cy	82	32	19	2	8	2	145
	4 cy	119	81	53	15	25	7	300
	6 cy	29	14	7	3	2	0	55
	8 cy	31	19	12	2	6	1	71
	Total	635	180	110	22	42	12	1,001

Source: "City of Milpitas Commercial Data – Final"
Provided to HFH April 2015

Table 2-9
Commercial Recycling Containers (April 2015)

Multi Family and Commercial Recycling Count (# of Containers)								
		Collections per Week						
		1	2	3	4	5	6	TOTAL
Container Size	32 gal	1	0	0	0	0	0	1
	64 gal	134	0	0	1	0	0	135
	96 gal	27	1	0	0	0	0	28
	1 cy	66	5	3	0	0	0	74
	2 cy	111	6	6	0	2	1	126
	3 cy	50	7	15	0	1	1	74
	4 cy	82	45	23	5	10	6	171
	6 cy	7	3	2	0	1	0	13
	8 cy	18	9	8	1	7	3	46
	Total	496	76	57	7	21	11	668

Source: "City of Milpitas Commercial Data – Final"
Provided to HFH April 2015

Table 2-10
City Container Collection – Refuse and Recycling (April 2015)

Location	Count
Bus Stops	82
Total	

Source: "City of Milpitas Bus stop"
Provided to HFH April 2015

Table 2-11
Roll-Off Summary Report (2014)

Material	Loads	Tons
MSW	2,923	12,089
Recycling	265	637
Total	**3,188**	**12,726**

Source: "City of Milpitas Roll-Off Data"

Table 2-12
Commercial Food Scrap Pilot – Container Count (April 2015)

Commercial Food Scrap Customers (# of Containers)							
		Collections per Week					
		1	2	3	4	5	TOTAL
Container Size	1 cy	1	1	1			3
	2.0cy	2	1				3
	3.0cy	1	2			1	4
	Total	4	4	1		1	10

Source: "City of Milpitas Commercial Data – Final"
Provided to HFH April 2015

Table 2-13
Commercial Food Waste Customers (April 2015)

	Customer Name
1	Beverly Heritage Hotel
2	Shirdi Sai Parivaar
3	CISCO Systems
4	XL Construction
5	Sandisk
6	Chili's
7	KLA
8	Headway Technologies
9	CIWA/Regency Tasman (Tasman Drive)
10	CIWA/Regency Tasman (McCarthy Blvd)

Source: "City of Milpitas Commercial Data – Final"
Provided to HFH April 2015

2.8 Current Diversion Information

The City has an AB 939 diversion level, as measured by the SB 1016 pounds of disposal method of 60.2%. The State's target per-resident disposal rate for Milpitas is 6.3 pounds per day and the City is achieving 5.0 pounds per day.

2.9 Billing Process

The City bills residential customers bimonthly in arrears of the provision of service through the City's utility billing system. Republic bills commercial and roll-off customers monthly in advance of the provision of service. The City is diligent in its efforts to collect residential revenues.

2.10 Additional Information

Table 2-14 identifies materials that are available via download from the procurement web page or through the specified links, as discussed in Section 2 or in other portions of the RFP. See Section 4 regarding the RFP Package Web Page.

Table 2-14
Information Available for Download

Number	Document	Location	Notes
1	Current Agreement and Exhibits	Available as download on RFP Package Web Page	
2	Construction and Demolition Debris Ordinance	http://library.municode.com/HTML/16311/level2/TIT15BUCO_CH15.64REDICODEDE.html	
3	MFD Complexes	Available as download on RFP Package Web Page	
4	*Others to be added*		
5			
6			
7			
8			
9			

SECTION 3: REQUESTED SERVICES

3.1 Overview

This Section provides a description of the requested services for Collection Proposals and Disposal Proposals, with services commencing September 6, 2017. Proposers may submit separate proposals for either or both of the services. The Franchise Agreement for collection services will be for a period of ten (10) years and the Disposal Agreement will have a twenty (20) year term. The Agreements may be extended as specified. See Section 3.2 for Collection Proposal information and Section 3.3 for Disposal Proposal information.

3.2 Collection Proposals - Scope of Services

3.2.1 Overview

The City is requesting that Collection Proposers submit a "Base Proposal" and several "Alternative Proposals." The technical and cost proposals for the Alternative Proposals will be evaluated and used by the City to determine if one or more of the alternative services will be included in the final scope of the Franchise Agreement. The scope of services for the Base Proposal and Alternative Proposals are summarized in this Section 3.2. Proposers are required to submit a response for the Base Proposal. Proposers are also required to submit responses for Alternative Proposals, except those identified as "optional".

The Franchise Agreement presents all of the contract terms and conditions including a complete description of the requested collection and processing services. It also describes contractor's compensation and rate-setting methods, dispute resolution, indemnification, insurance, performance assurances, defaults and remedy provisions, termination rights, performance standards and consequences for non-compliance, reporting obligations, and other provisions. If there are differences between the summary of collection and processing services described in this RFP and the Franchise Agreement and/or Disposal Agreement, the terms and conditions in the Franchise Agreement and/or Disposal Agreement prevail.

The collection contractor shall have the exclusive right to collect, process, and market residential and commercial solid waste, recyclable materials, and organic materials, except as provided in Section 1.1 of the Franchise Agreement (such as specialty recyclables which may be collected by others). These exclusive rights are consistent with current practice. The contractor may use its own processing site or a subcontractor's processing site. Proposers may offer use of a transfer station as they deem necessary to access processing facilities. Should proposers recommend a facility site located in the City, the site will be subject to the City's strict development permit review process.

As with many Bay Area communities, the planned infill growth noted in Section 2.4 is, and will increasingly entail mixed use buildings with residential and commercial units, as well as high density residential areas located near commercial areas. The result will be a wide range of housing types, with challenges for providing cost effective and customer friendly solid waste service such as collection hours, collection noise, narrow streets, buildings with limited vehicle ingress and egress, and limited container storage areas.

Proposers should assume use of new collection vehicles and containers. At a minimum, collection vehicles shall meet State of California Air Resources Control Board regulations for "Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicle Diesel Engines." Proposers should assume an average vehicle and container life of 10 or more years and plan to depreciate vehicles and containers over a 10-year period for the purposes of determining depreciation and interest expenses. At the end of the Franchise Agreement, the contractor will need to assume responsibility for any remaining book value of the equipment and turn ownership of containers over to City (at City's option).

Proposers may choose the type of vehicle fuel at their discretion.

The City requires that all Collection Proposers identify a site or potential sites to be used for staging equipment and personnel, performing equipment maintenance, and transferring (if necessary) recyclable materials and organic materials. New facilities in the City limits will need to conform to the City's strict development permit review process.

The collection contractor may enter into agreements with subcontractors to provide services requested in the RFP subject to the prior written consent of the City. Subcontractor arrangements shall be disclosed in the proposal. Agreements with the subcontractor(s) must meet the requirements of the level and type of insurance specified in Article 9 of the Franchise Agreement.

3.2.2 Base Services

Tables 3-1 through 3-4 summarize the required Base Services. In general, the Base Services are very similar to current services as described in Section 2 and in the Tables 3-1 through 3-4, and they reflect the addition of AB 1826-mandated organics programs that will take effect in 2016 under the current collection agreement. See additional information below regarding the Base Services Additional service requirements are detailed in the Franchise Agreement.

A. Single-Family Service

With regard to single-family solid waste collection proposal that continues the current combined system of customer-owned containers and contractor provided carts, proposers are encouraged to be creative in determining how best to provide the service. Customer-owned containers are currently collected using Curato cans and front end loaders.

With regard to single-family solid waste collection that continues the current combined system of customer-owned containers and contractor provided carts, proposers should suggest options to allow customers to effectively purchase rather than rent carts. For instance, one option would be a cart "rental" fee that is based on amortizing the cost of the cart over ten years, coupled with contractor ability to deliver used carts after the initial roll-out and possibly to charge a service change fee should a carat customer decide to switch to use of their own container.

B. Multi-Family Service

Table 3-2 addresses the full spectrum of multi-family complexes. In general, smaller multi-family complexes receive "Single-Family Style" service using carts, while larger multi-family complexes receive "Multi-Family Style" centralized bin service. The City, through the planning process determines the general type of service to be provided at new approved complexes, and in some cases use of compactors is required a condition of approval due to space constraints. Note also that the City has recently approved use of a consolidation service at one complex, and more may follow. Consolidators are not permitted to remove material from the site, but the Franchise Contractor will need to coordinate with property managers at these sites regarding provision of service. Collection Proposers should consider these factors when making decisions regarding vehicles and routing. Route productivity assumptions should demonstrate flexibility in addressing the needs of specific customer types (including those dictated as conditions of approval), tailoring service for instance with centralized bin and/or decentralized carts.

C. Recyclable Materials

The City is interested in enhancing the single stream collection program for all customers by expanding the type of materials collected, such as adding plastic film, bags and wrappers of all colors and black plastics. However, adding materials to the program is at proposer option.

Base services include replacing the two community-wide cleanups with four on-call cleanups. However, if a proposer believes the former to be more cost-effective than the latter, it should state as such and provide its assumptions.

D. On-Call Cleanups

Note that whether a multi-family complex receives Single-Family Style (carts) or Multi-Family Style (bins or other centralized collection) to some extent dictates what other services are available. Thus as noted in Table 3-2, complexes with cart service will receive free on-call events while those with centralized services will receive on-call events for a fee.

E. City Facilities

As shown in Table 3-4, the City currently receives collection from City facilities including the corporation yard at no added charge. The City also currently receives disposal at the Newby Island Recyclery of up to ____ cubic yards of City-delivered material at no added charge. Depending on the location of the future

disposal site, the self-haul material may instead be transported by City crews to the corporation yard for Franchise Contactor collection. See discussion in Section 5.9 and 6.8 regarding this material.

F. Special Events

As shown in Table 3-4, the City currently receives collection of up to 1,000 cubic yards per year from special events and other city cleanups at no added charge. See discussion in Section 5.9 and 6.8 regarding this material.

Table 3-1
Single-Family Collection Services

Service	Current Services	Base Services	Alternative Services
Mandatory Service	• Customers required to subscribe to and pay for solid waste, recyclable materials, and organic materials	• Same as current service	N/A
Solid Waste	• Weekly curbside collection • 96-gallon carts provided by contractor at customer request (rental fee for contractor-provided cart; additional carts available for an additional fee); or, • Unlimited number of 32-gallon customer-provided cans or bags	• Same as current service, <u>plus:</u> • *32-gallon and 64-gallon carts* • *Cart purchase option (see text)*	• Solid waste cart system using 32-, 64-, 96-gallon carts • Unlimited setout options
Recyclable Materials	• Weekly curbside collection • Commingled (single-stream) system; • 32*, 64- or 96-gallon carts provided by contractor	• Same as current service, <u>plus:</u> • *Curbside cooking oil collection, with option to provide drop-off location* • *Expanded list of recyclables at proposer option*	N/A
Yard Waste	• Weekly curbside collection; • 96-gallon cart provided by contractor; • 32-gallon customer provided containers may be used with stickers • Extra material may be placed next to cart • Curbside holiday tree pick up at no cost	• Same as current service	N/A

Service	Current Services	Base Services	Alternative Services
Food Scraps	• None	• None	• Collection of food scraps and food-contaminated paper with yard trimmings; indoor pails
Backyard/Side Yard Service	• Provided to senior citizens and disabled customers at no additional cost	• Same as current service	• N/A
Other	• Two community-wide bulky item clean-ups • Two on-call bulky pick-ups per year for seniors • Weekly used motor oil and oil filter collected curbside • Weekly household battery collection curbside • Sharps disposal by mail • City bills services	• Same as current service <u>except:</u> • *Replace two community-wide cleanups with 4 on-call bulky pick-ups per year* • *Contractor to bill services with local option for in-person bill pay*	• N/A

Italics denote Base Services changes from Current Services.
* 32 gal option for seniors/ high-density households

Table 3-2
Multi-Family Collection Services

Service	Current Services	Base Services	Alternative Services
Mandatory Service	• Customers required to subscribe to and pay for solid waste collection	• Same as current service	N/A
Solid Waste	• At least weekly collection; • Contractor-provided carts or bins; • 96-gallon carts or 1-8 yard bins provided by contractor	• Same as current service, <u>plus:</u> • *32-gallon and 64-gallon carts*	N/A
Recyclable Materials	• At least weekly collection; • Contractor charges $4.39/unit/month for recycling; • Commingled (single-stream) system; • 32-*, 64- or 96-gallon carts provided by contractor	• Same as current service, <u>plus:</u> • *Expanded list of recyclables at proposer option*	N/A

Service	Current Services	Base Services	Alternative Services
Yard Waste	• Yard waste recycling program to begin April 2016 to comply with AB 1826	• Same as current service	• Per AB 1826, add 4 CY/week solid waste generators as of 1/1/19 • Per AB 1826, add 2 CY/week solid waste generators as of 1/1/20**
Food Scraps	• None	• Same as current service	• N/A
Other	• Two annual community wide cleanups • Billing services	• Same as current service, except: • *Four on-call bulky item cleanups at no added charge for properties with Single Family style.* • *On-call bulky item cleanups available for a fee for properties with Multi-Family style.*	• N/A

Italics denote Base Services changes from Current Services.
* 32 gal option for mobile homes.
** Will apply if by 1/1/20 CalRecycle determines disposal of organic waste is not below 50% of 2014 levels.

Table 3-3
Commercial Collection Services

Service	Current Services	Base Services	Alternative Services
Mandatory Service	• Customers required to subscribe to and pay for solid waste collection	• Same as current service	N/A
Solid Waste	• At least weekly collection; • Contractor-provided carts, bins, roll-off boxes or compactors; • 32- or 96-gallon carts or 1-8 yard bins;	• Same as current service	N/A

Service	Current Services	Base Services	Alternative Services
Recyclable Materials	• At least once every 30 days (or 60 days for compactor) collection; • Commingled (single-stream) system; • Additional fee for recycling • 32-, 64- or 96-gallon carts or 1-8 yard bins provided by contractor • 10-50 yard roll-off container (must be picked up 2.5 times per month or bin rental fee applies) • Deskside recycling boxes	• Same as current service, plus: • *Expanded list of recyclables at proposer option*	N/A
Yard Waste	• Yard waste collection program to begin April 2016 to comply with AB 1826	• Same as current service	• Per AB 1826, add 4 CY/week solid waste generators as of 1/1/19 • Per AB 1826, add 2 CY/week solid waste generators as of 1/1/20*
Food Scraps	• Pilot-scale food scrap program • Food scrap collection program to begin April 2016 to comply with AB 1826	• Same as current service	• Per AB 1826, add 4 CY/week solid waste generators as of 1/1/19 • Per AB 1826, add 2 CY/week solid waste generators as of 1/1/20*
Other	• Billing services	• Same as current service, plus, • *On-call bulky item cleanups available for a fee.*	• N/A

Italics denote Base Services changes from Current Services.

* Will apply if by 1/1/20 CalRecycle determines disposal of organic waste is not below 50% of 2014 levels.

Table 3-4
Other Services

Service	Current Requirements	Base Services	Alternative Services
City Facilities	• Free collection from City facilities (excluding schools) • Free recycling to city facilities and parks and for rigid containers as needed • Free shredding of confidential City documents • Free collection at bus stops and container maintenance • Free self-haul delivery of solid waste and recyclables generated during maintenance of parks, fields and streets to Newby island • No charge to City	• Same as current service except, • *Proposers should assume that materials now delivered to Newby Island via self-haul will instead be added to other materials collected from the City's corporation yard.*	• N/A
Special Events	• Provide 6 free recycling containers to non-profit events • 500 yards of free hauling and disposal services per year • 500 additional yards of free special cleanup or other civic programs	• Same as current service	• N/A
Public Outreach	• Contractor develops and distributes targeted information to customers related to recycling and source reduction • Follow City quarterly schedule of development and distribution of collateral materials • Assist with outreach and distribution to non-English speaking residents • Perform street sweeping outreach • Assist with preparation and provide presentations to schools, community and businesses	• Same as current service	• N/A

Service	Current Requirements	Base Services	Alternative Services
Temp Debris Box Service	• Temporary debris box service (non-exclusive system)	• Same as current service (excluded from franchise services)	• Add temporary debris box service to exclusive franchise services, subject tto limitaitons of Section 1.1 of the Franchise Agreement
Street Sweeping	• Residential areas twice per month (certain areas to be swept weekly during November and December) • Commercial and industrial 4 times per month	• Same as current service, except • *Service must utilize vacuum trucks and recycled water*	• N/A
Dump Days	• Household Dump Day every 2nd and 4th Saturday of each month for non-commercial solid waste at Newby Island Landfill*	• *Provide options with Disposal Proposals – see Section 3.3*	• N/A

Italics denote Base Services changes from Current Services.
*Except when Christmas and New Years falls on Saturday.

3.2.3 Alternative Services

Tables 3-1 through 3-4 summarize required and optional Alternative Services. The Alternative Services are further described in the Franchise Agreement. The City wishes to evaluate the potential benefits and costs of several alternative services to determine whether it will require the franchise contractor to implement one or more of the service(s), and in the case of the new AB 1826 programs to assist multi-family and commercial customers in understanding any added cost for provision of service.

The collection contractor may enter into agreements with subcontractors to provide services requested in the RFP subject to the prior written consent of the City. Subcontractor arrangements shall be disclosed in the proposal. Agreements with the subcontractor(s) must meet the requirements of the level and type of insurance specified in Section 9.2 of the Franchise Agreement. Alternative Services are described below.

A. Single-Family Solid Waste Cart-Only System (Required)

Proposers are required to provide a “conventional” contractor-owned cart proposal, with choice of 32-gallon, 64-gallon and 96-gallon carts.

B. Single-Family Food Scraps with Yard Trimmings (Required)

Proposers are required to provide a proposal for single-family foods scraps and food contaminated paper co-collected with yard trimmings, and with distribution of indoor pails.

C. Multi-Family Yard Trimmings Collection Mandated by AB 1826 – Post 2017 (Required)

AB 1826 provides that beginning January 1, 2019, generators of four cubic yards or more of solid waste per week must divert yard trimmings. AB 1826 also provides that beginning January 1, 2020, generators of two cubic yards or more of solid waste per week must divert yard trimmings. However, the 2020 requirement is contingent on a State finding that the level of organics disposal has decreased by less than fifty percent compared to 2014 levels.

Proposers should assume provision of multi-family yard trimmings collection service with a minimum level of 96 gallons of organic material capacity per week to each complex and to collect yard trimmings from one to six days per week upon customer request using carts and bins, and drop boxes. Multi-family customers with landscaping service meeting the provisions for limitations to the scope in the Franchise Agreement will not be required to subscribe to collection service through the franchise.

D. Commercial Yard Trimmings and Food Scraps Collection Mandated by AB 1826 – Post 2017 (Required)

AB 1826 provides that beginning January 1, 2019, generators of four cubic yards or more of solid waste per week must divert yard trimmings and food scraps. AB 1826 also provides that beginning January 1, 2020, generators of two cubic yards or more of solid waste per week must divert yard trimmings and food scraps. However, the 2020 requirement is contingent on a State finding that the level of organics disposal has decreased by less than fifty percent compared to 2014 levels.

Proposers should assume provision of commercial yard trimmings and food scraps collection service with a minimum level of 64 gallons of organic material capacity per week to each business for each type of material, and to collect organic materials from one to six days per week upon customer request using carts and bins, and drop boxes. Commercial customers with landscaping service meeting the provisions for limitations to the scope in the Franchise Agreement will not be required to subscribe to collection service through the franchise.

E. Temporary Debris Box Service (Required)

Proposers are required to submit a proposal to include temporary debris box services within the scope of the Franchise Agreement, subject to the limitations of scope provisions of Section 1.2. The City is interested in innovative ways to provide convenient and cost-effective services, such as provision of a "bin-for-a-day". The current nonexclusive temporary debris box system allows for collection of a broad range of materials, such as tallow. As provided in Section 1.2 of the Franchise Agreement, some of these materials will remain nonexclusive even if the temporary debris box system itself does not continue.

F. Other Service Enhancements and Innovations (Optional)

Proposers are invited to submit additional service enhancements, innovations, or cost-saving approaches.

3.3 Disposal Proposal – Scope of Services

The City requests that Disposal Proposers submit a separate proposal addressing the services provided below. The proposed Disposal Agreement presents all of the contract terms and conditions including a complete description of the requested disposal and disposal-related services. It also describes contractor's compensation and rate-setting methods, dispute resolution, indemnification, insurance, performance assurances, defaults and remedy provisions, termination rights, performance standards and consequences for non-compliance, reporting obligations, and other provisions. If there are differences between the summary of disposal services described in this RFP and the Disposal Agreement, the terms and conditions in the Disposal Agreement prevail.

The Disposal Proposal scope of services includes the following.

3.3.1 Transfer and Transport (Optional)

Proposers may at their option propose use of a transfer station and transport of solid waste to the proposed disposal facility.

3.3.2 Disposal (Required)

Proposers are required to propose to provide disposal services for the term of the Disposal Agreement. As provided in the Disposal Agreement, the selected disposal contractor will receive all solid waste collected by the collection contractor that is intended for disposal, without minimum or maximum tonnage or "put-or-pay" commitments on the part of the City.

3.3.3 Material Drop-Off (Optional)

Proposers are required to offer a local location for drop-off of yard trimmings, recyclables, bulky items and other nonputrescible items (excepting yard trimmings). This service may include use of a transfer facility, a disposal facility, or a third type of location as long as properly zoned and permitted to accept such material for hauling to a transfer facility or disposal facility.

3.4 Municipal Code Revisions

It is likely that award of the Franchise Agreement and Disposal Agreement will be accompanied by changes to the Chapter 200, Title V of the Milpitas Municipal Code, and possibly to other provisions as well. It is anticipated that the Code will be revised as needed prior to the September 6, 2017 commencement date of the new agreements.

3.5 Reimbursement of Procurement Costs

The selected Collection Proposer will reimburse the City for the City's procurement-related expenses (including, but not limited to, consulting fees). The reimbursement payment will be made by the selected proposer within five (5) days of the execution date of the Franchise Agreement. The reimbursement expense is estimated at the time of RFP release to be $200,000. The expense is not considered an allowable expense.

SECTION 4: RFP CONDITIONS AND PROPOSAL SUBMITTAL

Unless otherwise noted, the requirements of this Section 4 apply to proposers submitting a Collection Proposal, a Disposal Proposal, or both.

4.1 Rights Reserved by the City

The City of Milpitas reserves the right, in its sole discretion, to pursue any or all of the following actions in regard to this RFP process:

- Issue addenda and amend the RFP and Franchise Agreement;
- Request additional information and/or clarification from proposers;
- Extend the deadline for submitting proposals;
- Allow for the timely correction of errors and waive minor deviations;
- Cancel or withdraw this RFP;
- Waive or remedy technical errors in the RFP process;
- Postpone opening the proposal for its own convenience;
- Not provide a complete evaluation of a proposal;
- Accept any offer in full or in part;
- Reject any or all proposals that, in the City's sole judgment, do not fully comply with the requirements detailed in this RFP, its attachments, addenda, or clarifications;
- Reject incomplete proposals; proposals containing errors, inconsistencies, false, inaccurate or misleading information; proposals submitted after the deadline; and/or, proposals with other process or content errors or deficiencies;
- Reject any or all proposals, and in City's sole discretion issue a new RFP;
- Reject a proposal that is given the highest quantitative scoring or ranking in the evaluation process if it is not in the best interest of the City and its residents and businesses;
- Request "best and final offers" from one or more proposers;
- Award the Franchise Agreement to a proposer based on a combination of its qualitative and quantitative attributes;
- Award the Franchise Agreement to a proposer without further discussion or negotiation;
- Contract directly for street sweeping services;
- Negotiate changes in the services proposed and/or described in the RFP or to incorporate programs proposed by others; and, negotiate changes to the Franchise Agreement;
- Negotiate with selected contractor for a later commencement date;

- Issue subsequent RFP(s) for the same, similar, or related services at a later date;
- Amend its General Plan Policies;
- Amend its Municipal Code, Planning and Zoning Code, and Design Standards and Guidelines; and,
- Take other actions the City deems are in the best interest of its residents and businesses.

4.2 General RFP Agreements

This RFP shall not be construed by any party as an agreement of any kind between the City of Milpitas, proposer(s), and other parties.

This RFP does not obligate the City to accept any proposal, negotiate with any proposer, award a franchise agreement, or proceed with the development of any project or service described in response to this RFP. The City has no obligation to compensate any proposer for its expense of preparing its proposal and participating in this procurement process.

Submittal of a proposal signifies proposer's commitment to provide the proposed services, at the proposed prices, if selected.

All conditions, pricing and any other aspect of proposals submitted in response to this RFP shall be valid for one year from the proposal due date shown in Table 1-1. In addition, all aspects, conditions and components of proposals submitted shall be valid for one year. Proposals may not be altered after submittal, except in response to the City's request for clarification.

Submitted proposals may be withdrawn up to the date and time of required submittal shown in Table 1-1. Proposals may not be altered after submittal, except in response to the City's request for clarification or a City request during negotiation of an agreement.

All proposer responses to this RFP shall be prepared at the proposer's expense, with the express understanding that there shall be no claims whatsoever for reimbursement from the City for the cost or expense of such preparation, or for any subsequent aspect of the process.

Submission of a proposal shall constitute acknowledgment and acceptance of all the terms and conditions contained in this RFP, the Franchise Agreement and the Disposal Agreement, including all addenda or amendments issued by the City per the schedule provided in this RFP except that proposers may take exceptions to the RFP, and to each agreement in accordance with this Section 4, as well as Sections 5 and 6 of the RFP. Submittal of a proposal signifies proposer's commitment to provide the proposed services, if selected.

The City shall have the right (but not the obligation) to perform a review of any one, or each, proposer's ability to perform the work required. Each proposer must agree to cooperate with such a review. Such cooperation by proposer shall apply to the verification of the proposer's capability and experience in the provision of services and any other component of work that may be required under this procurement.

The City, or its consultants, may conduct reference checks that will involve contacting municipalities currently or previously served by proposer, as well as contacting regulatory agencies involved in oversight of proposers' facilities. In addition, the City or its consultants may research proposers' past performance by reviewing litigation history, regulatory actions, highway driving records, and recycling history. The proposer's submission of a proposal shall constitute an agreement to cooperate with the City's review.

4.3 Proposal Submittal Process

Companies submitting proposals to the City shall follow the procedures described in this Section 4.3 and the procedures included in subsequent clarifications or addendums to this RFP, which are issued by the City or its consultant.

4.3.1 Step One – Register for Correspondence, RFP, and Announcements

Proposers that attend the pre-proposal meeting, provide contact information on the sign-in sheet at the meeting, and submit an executed Process Integrity Policy form will be automatically registered to receive correspondence and announcements. If proposer does not attend the pre-proposal meeting or if their contact information was not provided at the pre-proposal meeting, proposer must request that it be placed on the list of interested parties in order to receive the RFP, future correspondence, and announcements related to this RFP, and must submit its executed Process Integrity Policy form. The deadline for submitting a request to be included in this RFP process is shown in Table 1-1. Proposers that fail to register by the specified deadline shall be excluded from this RFP process. Proposer must email said request to MilpitasRFP@hfh-consultants.com.

4.3.2 Step Two – Submission of Written Questions; Objections to RFP

The City directs proposers to submit all questions and requests for information in writing directly to its consultant. **Do not seek to communicate with City staff regarding the RFP package or RFP process.** Therefore, any questions, requests for clarification, or requests for additional information regarding this RFP must be submitted in writing via email to HF&H Consultants at the email address listed in Section 4.3.1. Questions submitted on or before the date and time provided in Table 1-1 will be addressed at the pre-proposal meeting. Proposers may submit additional questions on or before the relevant date and time provided in Table 1-1.

The City will respond to all written questions and requests for clarifications submitted by proposers by the date provided in Table 1-1. Such response will be in writing and shared with all interested proposers of record without identifying the party asking the question.

Any objections as to the structure, content, or distribution of this RFP also must be submitted prior to the submission deadline for questions provided in Table 1-1. Objections must be as specific as possible, must identify the RFP section number and title, and must describe the proposer's rationale for the

objection. Proposer will be deemed to have accepted and agreed to all provisions of the RFP to which proposer has taken no objection.

4.3.3 Step Three –Pre-Proposal Meeting

The pre-proposal meeting will be held at the date and time provided in Table 1-1 in the City Council Chambers at 455 East Calaveras Boulevard, Milpitas, CA 95035. Attendance at this meeting is voluntary. Proposers are encouraged to submit questions in advance of the meeting (in accordance with Section 4.3.2) or prepare and pose questions at the pre-proposal meeting. Preliminary oral responses to questions will be provided at the discretion of City staff at the pre-proposal meeting.

Written responses to questions will be provided by the date specified in Table 1-1 to all eligible proposers (those companies that registered pursuant to Step One - see Section 4.3.1). In the event of any inconsistencies between oral responses provided at the pre-proposal meeting and written responses subsequently issued, the written responses must be used by proposers for the purpose of preparing proposals.

4.3.4 Step Four – Proposal Submittal

Proposer shall submit five bound double-sided copies of each complete proposal. In addition, a computer disk or other generally accepted electronic storage device containing: 1) an electronic copy of all completed cost proposal forms (i.e., those provided in Attachment 4 of the RFP) formatted for the PC version of Microsoft Excel; 2) a PDF of the proposal (excluding proposal attachments, and financial statements); and, 3) Microsoft Word version of Franchise Agreement and Disposal Agreement with any changes tracked using Microsoft Word's track changes feature (see Section 5.8 and Section 6.9 for additional information). These items shall be placed and submitted in a sealed package. Collection Proposers must also include a separate envelope containing the solid waste off-route transport information required in Section 5.9.1. Proposals must be printed on 8½ inch by 11 inch paper. All pages shall be consecutively numbered; although, each section may start with a new page number if proceeded with the section number (e.g., Page 2-1 for the first page of Section 2).

Proposers submitting both a Collection Proposal Services and a Disposal Proposal must submit them in separate packages. Each package shall be clearly labeled as applicable, as follows:

PROPOSAL FOR CITY OF MILPITAS COLLECTION AND PROCESSING SERVICES

Name of Proposer:
Address:
Contact Person:
Telephone Number:
Fax Number:
E-mail:

Or,

PROPOSAL FOR CITY OF MILPITAS DISPOSAL SERVICES

Name of Proposer:
Address:
Contact Person:
Telephone Number:
Fax Number:
E-mail:

Proposals may be mailed or hand delivered to:

Mary Lavelle, City Clerk
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
(408) 586-3000

All proposals must be received by the date and time shown in Table 1-1. Proposals received after this time and date may be rejected. Postmarks will not be accepted as proof of receipt.

Each Collection Proposal must be accompanied by surety made payable to the City of Milpitas in the amount of thirty thousand dollars ($30,000) and in the form of a certified check, cashier's check, or bid bond. These sureties shall be submitted with the proposal in a separate, clearly labeled envelope. The purpose of the surety is to guarantee that the successful contractor will execute a Franchise Agreement with the City. If the selected contractor does not execute the Franchise Agreement within thirty (30) calendar days after receiving notice of the award of Franchise Agreement, the City may keep the surety to offset the potential cost associated with identification of an alternate service provider and schedule delays and has the right to pursue additional and reasonable costs incurred by the City in this event. Checks and bonds will be returned to all proposers no later than ten (10) calendar days after the City has fully executed the Franchise Agreement with the successful contractor.

Each Disposal Proposal must be accompanied by surety made payable to the City of Milpitas in the amount of fifteen thousand dollars ($15,000) and in the form of a certified check, cashier's check, or bid bond. These sureties shall be submitted with the proposal in a separate, clearly labeled envelope. The purpose of the surety is to guarantee that the successful contractor will execute a Disposal Agreement with the City. If the selected contractor does not execute the Disposal Agreement within thirty (30) calendar days after receiving notice of the award of Disposal Agreement, the City may keep the surety to offset the potential cost associated with identification of an alternate service provider and schedule delays and has the right to pursue additional and reasonable costs incurred by the City in this event. Checks and bonds will be returned to all proposers no later than ten (10) calendar days after the City has fully executed the Disposal Agreement with the successful contractor.

Proposals will only be accepted from parties that have submitted an executed Process Integrity Policy form. Any interested party that violates the terms of the Process Integrity Policy may at City's sole discretion be eliminated from the City's RFP process.

4.3.5 Step Five – Clarification of Proposal Information; CEQA

Proposer may be asked to clarify information through written communications, and interviews or during site visits of each proposer's offices; customer service center; corporation yard and maintenance facilities; and, transfer and processing facilities. This clarification process may involve requesting that the proposer demonstrates how financial, customer service, and management information systems can provide reports required by the Franchise Agreement. The clarification process may be performed by City staff and/or their consultants.

During the evaluation process, the City will determine if any aspect of a proposal necessitates review under the California Environmental Quality Act (CEQA). Should the City make such a determination, proposer shall upon City direction and at its own cost conduct such review and underlying analyses as may be required. Proposers shall coordinate with City as requested in defining the scope of the analyses, in providing drafts for City review and comment, and in making such revisions as City may reasonably require.

4.3.6 Schedule

The timeline for evaluation of proposals, contractor selection, and contract negotiations is summarized in Table 1-1 in Section 1.

4.4 Proposer Review and Examination

Proposers must carefully review the RFP, including the Agreement, and all related materials. Failure or neglect to examine any form or document released by the City during the process, or any misinterpretation of the requirements shall in no way relieve proposers from any of the obligations contained in this RFP or in any addenda.

Prior to submitting a proposal, proposers must make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by the City upon which proposer will rely.

4.5 Disclaimers

To the best of the City's and its consultants' knowledge, all data and information provided during the RFP process is accurate. However, neither party is in any way responsible for any inaccurate, inconsistent, or incomplete data or information. In submitting a proposal, proposer agrees to waive any claims against the City or its consultant(s) for loss or damages incurred by proposer for its reliance on data and information contained in the RFP or subsequent communications.

Current conditions data provided in Section 2 reflect current collection practices. Regardless of whether the City modifies its current collection programs as a result of this process, there is no guarantee that

current or recent tonnages will continue to be available, nor is the data in Section 2 intended to imply any limitation on the tonnages that may be available for collection in the future.

4.6 Protection of Confidential Materials

As a rule, information submitted to the City by Proposers is subject to disclosure by the City upon request from a member of the public, under the California Public Records Act, Government Code Section 6250, et seq. The City recognizes that some information which is called for in the RFP, or which may be required to be submitted in subsequent stages of the evaluation and contracting process, may be considered trade secrets or otherwise confidential by some Proposers. By submitting a proposal, proposers agree to the following with respect to information they may believe is confidential.

Material which Proposers wish to be treated in confidence and withheld from public disclosure must be submitted in a separate envelope marked “CONFIDENTIAL.” In addition each page of confidential materials must be clearly marked as "CONFIDENTIAL." To the extent allowable by law, the City will not voluntarily disclose materials so marked "CONFIDENTIAL" to persons other than the City’s officers, attorneys, employees, and consultants involved in evaluating the proposals received.

If the City receives a request from a third party to review and/or copy material so marked "CONFIDENTIAL", it will promptly inform the Proposer who submitted it. The Proposer must then immediately take any action the Proposer deems necessary to protect the subject materials from disclosure. The Proposer must agree to indemnify and hold the City, its subsidiary agencies, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims in connection with any activities involving the protection of the materials, and must bear all costs in connection therewith.

The City may disclose information which it and its legal counsel determine is not protected from disclosure under the Public Records Act. In no event will the City be required to withhold material from disclosure beyond the time frames required by the Public Records Act in the absence of the filing of a legal action or an agreement among all affected parties.

Proposers shall have no right to recover damages or attorney’s fees or costs from the City, its subsidiary agencies, its elective and appointive boards, officers, agents and employees for any disclosure of information Proposers deem confidential.

Material that has been marked as confidential will be returned to all unsuccessful Proposers once a contract has been signed with the selected Proposer.

SECTION 5: COLLECTION PROPOSAL SUBMITTAL REQUIREMENTS

Section 5 includes the required Collection Proposal outline and a description of the specific information proposers must include in Collection Proposals. Proposer must provide the information identified in this Section as part of its proposal. Failure to provide all the required information may be grounds for rejection of a proposal.

5.1 Outline

Collection Proposals shall be submitted in accordance with the outline provided in Table 5-1. Items that are not required elements of the proposal are noted as "Optional." At proposer's option, the proposer may include additional information or data on other relevant topics or more detail on the information requested herein that is relevant to the proposal. Proposers should maintain the section numbering in Table 5-1 even if optional services are not proposed, with a statement that the given section is not applicable. Any additional information shall be included as attachments to the proposal.

Table 5-1
Proposal Outline

i. Title Page

ii. Cover Letter

iii. Table of Contents

ES Executive Summary

1. Company Description
   - A. Business Structure
   - B. Collection Experience
   - C. Service Initiation Experience
   - D. Key Personnel
   - E. Labor Agreements and Wages
   - F. Past Performance Record
   - G. Financial Information

2. Technical Proposal for Base Proposal
   - A. Collection
   - B. Recyclables Materials Processing (and Transfer if proposed)
   - C. Organic Materials Processing (and Transfer if proposed)
   - D. Residential On-Call Bulky Item Clean-Up Events
   - E. Public Outreach
   - F. Multi-Family/Commercial Recycling Technical Assistance
   - G. Customer Service

H. Customer Billing
I. Multi-Family and Commercial Recycling and Organics Plan
J. Subcontractors
K. Management and Customer Service Systems
L. Corporation Yard and Maintenance Facilities
M. Street Sweeping
N. Implementation Plan

3. Technical Proposal for Alternative Services
   A. Single-Family Solid Waste Cart-Only System (Required)
   B. Single-Family Food Scraps with Yard Trimmings (Required)
   C. Multi-Family Yard Trimmings Collection as Mandated by AB 1826 – Post 2017 (Required)
   D. Commercial Yard Trimmings and Food Scraps Collection as Mandated by AB 1826 – Post 2017 (Required)
   E. Temporary Debris Box Service (Required)
   F. Other Service Enhancements and Innovations (Optional)

4. Environmental Considerations (Optional)

5. Acceptance of RFP and Franchise Agreement

6. Cost Proposal
   A. Base Cost Proposal
   B. Cost Proposal for Alternative Services

7. Other Proposal Forms
   A. Secretary's Certificate
   B. Anti-Collusion Affidavit
   C. Iran Contracting Certification

Attachments Financial statements; additional material may be included at proposer's discretion (Optional)

5.2 Cover Letter

The cover letter shall clearly identify the legal entity(ies) submitting the proposal and state whether each entity is a sole proprietorship, partnership, corporation, joint venture, or other. The cover letter shall be signed by the designated representative authorized to bind proposer as documented on the Secretary's Certificate to be submitted in accordance with the requirements below. The cover letter must include the following language:

"With submittal of this Collection Proposal, _____ (proposer) acknowledges and accepts all terms and conditions of the RFP and Collection Agreement, except for any exceptions taken in Section __ of our proposal."

The cover letter must also include a list with each RFP addendum issued through this RFP process and the date of receipt, with the following statement: "These addenda were received by and fully reviewed by *contractor name.*"

5.3 Executive Summary

Proposer shall provide a concise executive summary to introduce its proposal; present its strategy and costs; and highlight unique aspects of its approach to servicing the City. The executive summary can be used to highlight any additional programs, service enhancements, or other innovations proposed.

5.4 Company Description

5.4.1 Business Structure

In its proposal, proposer shall:

1. Confirm that proposer is authorized to do business in California;
2. Identify the legal entity that would execute the Franchise Agreement. State whether each entity is a sole proprietorship, partnership, corporation, or joint venture. Describe in detail the relationship of the proposer to the executing entity. If the proposer is a joint venture, describe where the entities have collaborated before;
3. State the number of years the entity(ies) have been organized and doing business under this legal structure. Proposal must include all the names of company's (and executing entities' if different than company's) owners/stockholders with greater than a 10% holding and creditors owed a debt greater than 10% of the company's total assets;
4. Identify other businesses with ownership by principals and/or management; and,
5. Identify each subcontractor to be used, describe their qualifications to provide the service, and summarize all services they will perform. Proposer shall describe any current or past working relationship with the subcontractor(s) in the past five years.

5.4.2 Collection Experience

Proposer must describe its experience serving jurisdictions in California (preferably serving jurisdictions of similar or larger size and similar demographics to the City of Milpitas). Proposer's description for each comparable jurisdiction shall include:

1. The name of the jurisdiction where the services were provided, commencement date of services and term of the agreement;

2. The service provided (e.g., solid waste collection, recyclable materials collection, organic materials collection, processing, transfer, street sweeping, and other unique collection programs at proposer's discretion such as those for e-waste, u-waste, or household hazardous waste);
3. The name, address, and telephone number of the jurisdiction's representative responsible for administering the agreement; and,
4. The number of single-family, multi-family, and commercial customers served.

5.4.3 Service Initiation Experience

The City is interested in learning about each proposer's experience with implementation of new franchise agreements and new organics programs. Include a minimum of three reference projects for which the proposer has initiated a new collection contract and/or new collection services. For each reference program, the description shall include:

1. The name of the jurisdiction where the services were provided and commencement date and term of the agreement;
2. The service initiation performed (i.e., initiation of a new franchise agreement, multi-family and commercial food scraps collection, etc.);
3. The name, address, and telephone number of the jurisdiction's representative responsible for administering the agreement;
4. The number of residential and commercial customers served;
5. Description of how the company handled the specific requirements for the procurement of vehicles and personnel; training of personnel; billing and fee collection services; determination of routes and operating procedures; delivery of containers; public outreach; and the preparation of procedures to ensure a smooth transition from one company to another and one type of service to another, use of recycled-content carts; and,
6. Identification of problems that occurred during the initiation of the new contract and solutions implemented to solve the problem(s).

5.4.4 Key Personnel

Provide an organization chart for key personnel. Identify key personnel the proposer plans to assign to: (1) the implementation team; and, (2) the ongoing management of the services provided under the Franchise Agreement. At a minimum, provide the names, contact information, and qualifications for the following key personnel:

- Regional Manager
- District Manager
- Site Manager

- Operations Manager
- Customer Service Manager

Also provide the name, contact information and qualifications for the person who will serve as the primary contact person for the City during the term of the Franchise Agreement.

If specific individuals have not been identified for one or more positions, provide the job description and/or hiring criteria that will be used to select the individual.

5.4.5 Labor Arrangements

Proposer shall identify its plan for arranging labor if they are selected to provide collection and processing services in the City. Specifically, proposer shall identify if and when they plan to enter into any collective bargaining agreement(s), the labor organization(s) the proposer will work with, and the nature of the collective bargaining agreement(s). If services will be provided under an extension or renewal of an existing labor agreement, provide a copy of the full agreement including all amendments, extensions, and/or renewals. If new labor agreement(s) will be negotiated prior to the commencement of the Franchise Agreement, provide a memorandum of understanding between the labor organization and company outlining the terms and conditions of the agreement, wage rates, employee benefits, and work rules.

5.4.6 Past Performance Record

1. Litigation and Regulatory Actions. Describe past and pending civil, legal, regulatory, and criminal actions (including arrests, indictments, litigation, grand jury investigations, etc.) now pending or that have occurred in the past ten (10) years against the key personnel identified above, proposing entity, its parent company, and all subsidiaries owned by proposing entity.
2. Payment of Fines, Penalties, Settlements, or Damages. Provide a statement disclosing any and all fines, penalties (including liquidated damages or administrative fees in excess of $25,000 in one calendar year), settlements, or damages of any kind paid by proposer, its parent company and subsidiaries, to public agencies in the past five years. For each payment, list the amount the company has paid, the name of the jurisdiction to which damages were paid, and the event(s) which triggered the damages. Identify what personnel and/or policy changes the company made in response to such incidents (e.g., terminated or reassigned employees involved, new process protocols, etc.).

The requirements of Section 5.4.6 apply to:

1. Collection, transfer and processing operations conducted in the Greater Bay Area (defined as Alameda, Contra Costa, Monterey, Napa, San Mateo, Santa Clara, Solano, and Sonoma counties).

2. Proposers who operate in multiple counties or states with independent management structures need only report such actions relative to the operations managed by the management team proposed to be responsible for this contract.
3. Lawsuits which involved only claims for personal injury or property damage arising from vehicle accidents which resulted in defense verdicts or in judgments against defendant, or settlements of less than $10,000, need not be disclosed.

The occurrence of past or pending civil, legal, regulatory, or criminal actions does not automatically disqualify a company from participating in this process. However, failure to report such actions, whether discovered before or after the City executes the Franchise Agreement, shall be considered a material omission and may form the basis for disqualifying a proposer or terminating the Franchise Agreement.

5.4.7 Financial Information

1. Financial Statements. Submit audited financial statements for the most-recently completed fiscal year for the legal entity(ies) that would execute the Franchise Agreement. All such statements are to be prepared in accordance with Generally Accepted Accounting Principles applied on a consistent basis and shall be audited in accordance with Generally Accepted Auditing Standards by an Accountant certified in the State of California and shall include a statement by the chief financial officer (CFO) of the entity(ies) that there has been no material adverse change in such condition or operations as reflected in the submitted balance sheet and income statements since the date on which they were prepared. The proposer may submit an electronic version of the audited financial statements or may provide a website address linking to audited financial statements if available on the proposer's website. Printed copies of the statements do not need to be submitted with the proposal if an electronic copy is provided or web access is made available.
2. Financing Plan. Describe the plan for financing all capital requirements (i.e., those listed on Cost Proposal Form 4) in a "Sources and Uses of Funds" format, which describes the sources of required capital (e.g., banks, leasing companies, cash reserves, etc.) and uses (e.g., property, trucks, equipment, containers, reserves, etc.). Attach supporting documents (e.g., letters from banks or leasing companies) that demonstrate your ability to implement the financing plan.

5.5 Technical Proposal for Base Services

Proposers shall describe how it plans to perform the collection and processing services requested in Section 3.2 of this RFP and described in the Franchise Agreement. In presenting information requested herein, proposer shall explain the method of delivering the services, equipment selected, routing strategies, and collection and processing methods. The description shall also note differences (for different customer types including variations in multi-family housing) in terms of routing strategies, collection methods, vehicles, collection crew size, etc. In addition, proposers must describe in detail why its technical approach to the services was chosen and its advantages to the City. If a proposer has presented information for one type of service that is the same for another type of service, proposer can refer to its previous description rather than reiterating the discussion in its proposal.

5.5.1 Collection

Proposer shall describe how it plans to perform the collection services requested in the RFP and described in the Franchise Agreement. Specifically, information should separately address solid waste, recyclable materials, and organic materials collection for each single-family service, multi-family service, commercial service, and drop box and compactor service. Single-family solid waste service should address collection from both customer-owned containers and contractor-provided carts. Include at a minimum:

- Collection methodology;
- Equipment to be utilized (e.g., equipment/vehicle description, number, types, cost, capacity, age, etc.);
- Cart and bin sizes, with numbers for proposed initial delivery of, and inventory for each;
- Standard crew size; and,
- Number, types, sizes, and manufacturer's specifications of containers to be utilized;

If the proposed methodology or equipment relies on co-collection vehicles, split containers, or an uncommon method, proposer must provide the names of jurisdictions where the proposer is successfully using the equipment/method. Also, describe in detail how this collection technology will work, why it was chosen for the City, and how it will benefit and work in the City specifically.

5.5.2 Recyclable Materials Processing

The following information is required for recyclable materials processing services:

1. Processing Site Information. Name, location, and description of the processing facility(ies) where recyclable materials will be handled; name of owner and operator of the facility(ies); contact name and phone number of the site manager; description of processing methods; method of tracking tonnage if the facility is receiving tonnage from other jurisdictions; and, the current average monthly residue level of the processing site. Identify if the company that owns or operates the processing site is the same as the proposing entity, a related-party entity, or a subcontractor.
2. Permits and Regulatory Compliance. Provide contact names for the regulatory agencies that monitor the processing facility's compliance with applicable local, State, and federal laws and regulations. For each contact, provide the name of the regulatory agency, the contact person's name, title, and telephone number.
3. Available Processing Capacity. Provide a written commitment guaranteeing capacity for the recyclable materials collected under the Franchise Agreement throughout the term of the Franchise Agreement. If proposer is not the owner or operator of the facility, proposer is to provide a letter of commitment from the processing facility owner to comply with this RFP requirement.

4. Import Restrictions or Fees. List any import restrictions, taxes, or fees that will be applicable to the receipt of the City's recyclable materials. Discuss the ability of the host jurisdiction or state to increase or levy taxes, host fees, or other fees. If there is an import restriction on accepting materials from outside of the local jurisdiction, describe the process to have the import restriction waived.

5. Transfer Method. If use of a transfer station is proposed in conjunction with the proposed processing site, proposer shall provide the same type of information requested in the above Items 1 through 4. If an alternative transfer method is proposed, proposer shall describe the transfer methodology and any equipment required, regulatory approval needed, and other pertinent information.

5.5.3 Organic Materials Processing

The following information is required for organic materials processing services:

1. Processing Site Information. Name and description of facilities where organic materials will be processed and composted, name of owner and operator, contact name and phone number of the site manager; description of processing and composting processes (including the type of composting method(s) used; method of tracking tonnage for the City if the facility receives tonnage from other jurisdictions, the products to be produced from the organic materials (e.g., compost, mulch, etc.), and the current average monthly residue level of the processing site. Note that the use of organic materials for alternative daily cover or beneficial reuse is not allowed under the Franchise Agreement. Identify if the company that owns or operates the processing site is the same as the proposing entity, a related-party entity, or a subcontractor.

2. Permits and Regulatory Compliance. Provide contact names for the regulatory agencies that monitor the processing facility's compliance with applicable local, State, and federal laws and regulations. For each contact, provide the name of the regulatory agency, the contact person's name, title, and telephone number.

3. Available Processing Capacity. Provide a written commitment guaranteeing capacity for the organic materials collected under the Franchise Agreement throughout the term of the Franchise Agreement. If proposer is not the owner or operator of the facility, proposer is to provide a letter of commitment from the processing facility owner to comply with this RFP requirement.

4. Import Restrictions or Fees. List any import restrictions, taxes, or fees that will be applicable to the receipt of the City's organic materials. Discuss the ability of the host jurisdiction or state to increase or levy taxes, host fees, or other fees. If there is an import restriction on accepting materials from outside of the local jurisdiction, describe the process to have the import restriction waived.

5. Transfer Method. If use of a transfer station is proposed in conjunction with the proposed organic material processing and/or composting site, proposer shall provide the same type of information requested above in Items 1 through 4. If an alternative transfer method is

proposed, proposer shall describe the transfer methodology and any equipment required, regulatory approval needed, and other pertinent information.

5.5.4 On-Call Bulky Item Clean-Up Events

Describe your approach to conducting four on-call bulky item clean-ups per year at now added charge for resident receiving single family style service, and on-call bulky item clean-ups for a fee for residents receiving multi-family style service and for businesses as discussed in Section 3.. Address differences in your approach to working with single-family and multi-family customers. Identify if and how you plan to encourage reuse, identifying what third party you plan to work with and list the materials that will be targeted for reuse. As noted in Section 3.2, should you believe that the current system of two community wide cleanups is less costly, please address in your proposal, and provide your supporting assumptions.

5.5.5 Public Outreach

The City places the utmost importance on effective public outreach and promotion as the key to helping residents and businesses understand more about source reduction, reuse, and recycling. Each proposer shall describe the following:

- Public outreach programs that will be implemented to educate single-family, multi-family, and commercial customers on the recyclable materials and organics collection programs;
- Plans for complying with AB 341 mandatory commercial and multi-family recycling and of AB 1826 mandatory commercial and multi-family organics outreach requirements;
- Description of your strategy for developing and using a website or webpage specific to Milpitas to provide customers with access to service information, rates, and other public education information; include links to example websites;
- Plans for presentations to schools and other community organizations;
- Participation at City events, such as booths, displays, sponsorship, parade floats, farmers markets, etc;
- Schedule and quantity of information that will be distributed (e.g., newsletter, brochures, etc.);
- Proposed number of employees, their job functions, and number of hours per week that will be devoted to the promotion and maintenance of collection services in Milpitas;
- Public outreach subcontractors (if any), and their qualifications, years of experience, and references;
- Samples of similar educational materials, which may have been used in other programs, particularly those related to recyclable materials collection and food scraps collection programs;
- Proposed budget for public outreach during the start-up period of the contract and on an annual basis; and,

- Other aspects or unique features of the proposed public outreach plan.

5.5.6 Multi-Family/Commercial Recycling and Organics Technical Assistance

- Describe proposer's plan to provide technical assistance to multi-family and commercial businesses and identify the specific type of onsite services and outreach materials that will be made available.
- Provide a context for the plan relative to the specific requirements of AB 341 and AB 1826.
- Identify who will manage the technical assistance efforts and the number and job classification/title of the individuals that will be conducting assistance work. Identify the estimated hours of technical assistance that will be provided per multi-family and commercial account and the total annual hours for the technical assistance program.
- Provide the type and number of customers that will be targeted and provide an estimate of the increase in the weekly cubic yards of recycling and organics service and the increase in annual recycling and organics tonnages.
- Describe the benefits of the proposed services, and potential challenges related to the service and strategies for managing such challenges.

5.5.7 Customer Service

To ensure that customers in the City obtain competent, professional and courteous customer service, proposer shall:

- Describe the location where proposer's customer service operation will be housed.
- Specify the number of full-time equivalent customer service representatives (CSR) that will serve the City. Describe how calls will be handled/reported, how many calls are expected per CSR, and describe any changes you will make to your current CSR operation to accommodate the City.
- Identify if the company has a website that customers may access to obtain customer rates, service information, pay bills, and to submit inquiries or complaints and provide website address, if applicable. Confirm that customers can email their queries and specify the maximum turn-around time for responses.
- Describe how the City will access the company's website or obtain access to the company's customer service system to view in real time and in a read-only format, customer service related information by customer type, including information such as the number of missed pick-ups, number and type of complaints received, level of service, collection day(s), etc. to comply with Section 4.12 of the Franchise Agreement.

5.5.8 Customer Billing

The collection contractor shall be responsible for billing all customers for services. To insure that customers in the City obtain competent, professional, and courteous customer service with regard to billing matters, proposer shall:

- Describe how the proposer will develop the necessary customer service and billing data at the start of services. Such a description shall include the proposer's approach for identifying service needs and process for auditing and verifying the accuracy of data in the contractor's system;
- Provide sample customer billings and a listing of jurisdictions where proposer currently provides billing services, including a contact name and phone number; and,
- Describe its procedures for dealing with customer service, with regard to customer billing demands, during the transition and throughout the term of the Franchise Agreement.

5.5.9 Multi-Family and Commercial Recycling and Organics Plan

Contractor will be required to provide, and shall describe how they shall address all program elements required for mandatory multi-family and commercial recycling collection under the provisions of AB 341, and mandatory multi-family and commercial organics collection under the provisions of AB 1826 as required for implementation prior to September 2017. Services shall include, at a minimum, determining what customers are covered by these two statutes and related implementing regulations, and providing collection, outreach, monitoring, and reporting services. Proposers should estimate weekly cubic yards and estimated annual tonnages of recyclables, yard trimmings and food scraps by customer type.

5.5.10 Subcontractors

For any proposed use of subcontractors to perform either Base Services or Alternative Services specified in the Franchise Agreement and this RFP, identify each subcontractor by name, provide contact information, describe corporate structure, qualifications and experience of the subcontractor, and describe in detail the services to be performed.

5.5.11 Management Systems and Customer Service Systems

Proposer shall describe the management systems and customer service systems its company plans to use to manage inquiries and complaints received from residential and commercial customers, and to provide the City the reporting required in Article 6 and Exhibit C of the Franchise Agreement. The description of the management systems and customer service systems shall include:

1. Name, type of equipment, software used to maintain routing and customer service information, and period of time the company has operated this system;

2. Management procedures for managing inquiries and complaints and procedures used to minimize complaints (e.g., missed pick-ups, noise, spills, etc.);
3. Description of system capability and/or procedures to ensure timely accessibility of information by jurisdictions served;
4. Description of whether individual call centers are established for each service area or if customer calls are handled by a centralized call center; and, identification of the location of the call centers that will be used;
5. Identification of whether the system is used company-wide or for select jurisdictions (listing which jurisdictions);
6. Description of how the customer service information interfaces with route and billing data and provision of examples of reports that summarize single-family and commercial customer information (name, address, service location, level of service, complaints, etc.);
7. Description of your company's internal performance standards/targets as well as procedures used to satisfactorily respond to, record, and report common customer complaints such as: missed pick-ups; spills and litter resulting from collection; collection schedule changes; broken or missing containers; improperly prepared set-outs; noise complaints; traffic and sidewalk obstruction during collection; and, safety around collection vehicles during operations;
8. Description of how the company measures customer service with regard to the call center's responsiveness and accuracy of responses, as well as the quality of collection service. Identification of specific performance metrics or targets your company tracks. Provision of copies of actual reports for at least three jurisdictions that document the actual performance level against your targets including, at a minimum, average hold times of the customer service call center and missed pick-ups;
9. Provision of copies of monthly or quarterly reports submitted to at least two jurisdictions that document monthly tonnage, customer account, and complaint information; and,
10. Demonstration of the ability to report the information required in Article 6 and Exhibit C of the Franchise Agreement if not demonstrated through the presentation of information required above.

5.5.12 Corporation Yard and Maintenance Facilities

Describe the proposed location(s) of the corporation yard for collection vehicles parking, collection container storage, employee parking, vehicle and equipment maintenance facilities, offices, and transfer operations (if necessary) of recyclable materials and organic materials. If the facility(ies) are currently operational and owned or leased by the proposer, describe plans, if any, to modify or expand the facility(ies) and the permitting process associated with the modification or expansion activities. If the facility(ies) need to be purchased, leased, and/or developed by the proposer, describe the acquisition and development plans; describe contingency plans in the event the proposed site is not available (or suitable) or in the event the acquisition and development timeline is delayed; and indicate willingness to honor the proposed costs if proposer has to secure a site other than described in its proposal.

5.5.13 Street Sweeping

Describe how the proposer will provide the required street sweeping services as described in Table 3-4, and in Section 4.16 and Exhibit F of the Franchise Agreement. Proposers should address how they will coordinate services with the City, and should address all relevant components of Section 5.5.1.

5.5.14 Implementation Plan

Provide a detailed implementation plan describing the proposer's approach to facilitating a smooth transition to providing services under the new agreement. The proposal must clearly describe the proposer's ability to implement the services in accordance with the schedule shown in Table 1-1 of this RFP. This should include how the proposer will meet equipment, personnel, administration, maintenance, and public outreach requirements, as well as transition issues such as high call volumes. The proposer should describe its assumptions regarding the City's staff participation and the current service provider's participation. Provide a schedule listing key events (i.e., equipment procurement, public outreach, container distribution, employee hiring and training, etc.), duration, and expected completion date of each event. Discuss contingency plans that will be in place for various aspects of the implementation process.

5.6 Technical Proposal for Alternative Services

For the alternative services listed below, provide a description of proposer's approach to providing each required service, and each optional service at proposer discretion.

5.6.1 Single-Family Solid Waste Cart-Only System (Required)

Proposers are required to provide a "conventional" cart-only proposal, with choice of 32-gallon, 64-gallon and 96-gallon carts, addressing the services and issues discussed in Section 3.2.1 and in Table 3-1 of the RFP. Please provide the same information as detailed in Section 5.5.1.

5.6.2 Single-Family Food Scraps with Yard Trimmings (Required)

Proposers are required to provide a proposal to collect single-family food scraps and food-contaminated paper with yard trimmings. Proposers should address in detail how the program will be designed and implemented including, but not limited to: the specific materials to be collected; provision of indoor pails; requirements for customer use of bags; collection method, vehicle type, labor requirements and routing if varied from the base proposal for yard trimmings; estimated participation, average set-out weights, and annual tonnages, and; the role of outreach and efforts to maximize participation.

5.6.3 Multi-Family Yard Trimmings Collection as Mandated by AB 1826 - Post 2017 Requirements (Required)

Proposers are required to specify how they will provide the services described in Section 3.2.2C, including but not limited to: collection method, vehicle type, labor requirements and routing compared to the base collection proposal; estimated number of multi-family complexes covered by the requirements; estimated participation, average set-out weights, and annual tonnages; meeting State reporting requirements, and; the role of outreach and efforts to ensure compliance. As discussed in Section 5.9, the cost forms request separate pricing for the 2019 and 2020 requirements. The intent is that the 2019 requirements will be part of the initial service package included with the final Franchise Agreement, while the 2020 requirements will be added later as needed based on escalated pricing included in the Franchise Agreement.

5.6.4 Commercial Yard Trimmings and Food Scraps Collection as Mandated by AB 1826 – Post 2017 Requirements (Required)

Proposers are required to specify how they will provide the services described in Section 3.2.2C, including but not limited to: collection method, vehicle type, labor requirements and routing compared to the base collection proposal; estimated number of businesses covered by the requirements; estimated participation, average set-out weights, and annual tonnages; meeting State reporting requirements, and; the role of outreach and efforts to ensure compliance. As discussed in Section 5.9, the cost forms request separate pricing for the 2019 and 2020 requirements. The intent is that the 2019 requirements will be part of the initial service package included with the final Franchise Agreement, while the 2020 requirements will be added later as needed based on escalated pricing included in the Franchise Agreement.

5.6.5 Temporary Debris Box Service (Required)

Describe your approach to collecting the “Non-Putrescible Solid Waste” and “Construction and Demolition” materials as defined in the template nonexclusive temporary debris box service agreement available for download as listed in Table 2-14, subject to the limitations in scope of Section 1.2 of the Franchise Agreement. Describe your method of collection, types of containers that will be made available, how you will work with construction and demolition contractors to encourage set-outs that maximize options for recovery, and detail how you will process and dispose of the debris. State what percentage of materials generated by construction and/or demolition projects will be targeted for recovery, and describe the processing facilities to be used.

5.6.6 Other Service Enhancements and Innovations (Optional)

Proposers are invited to submit additional service enhancements, innovations, or cost-saving approaches. In such case, proposer shall clearly describe the service enhancement and how it will benefit the customers and/or City.

5.7 Environmental Considerations (Optional)

At proposer's option, proposer may identify environmental enhancements it can incorporate into its operations and/or describe its company's environmental policies that support the City's goals and objectives related to:

- Minimizing environmental impacts (e.g., air, water, depletion of natural resources) associated with collection, transfer, and processing services;
- Encouraging the highest and best use of recycled materials; and,
- Supporting, where practical, local and regional end markets for recyclables.

Examples of environmental enhancements, aside from alternative fuels, include:

- Obtaining certification as a "Green Business" through the Bay Area Green Business Program;
- Incorporating green building best practices and standards into facilities used by proposer;
- Adopting environmentally preferable purchasing policies for the company's operations; and,
- Achieving certification to national or international standards (e.g., ISO certification for environmental or quality management).

The above examples are intended as guidance for what may be considered environmental enhancements. Proposer is not obligated to address any of these elements.

5.8 Acceptance of Franchise Agreement

Proposer are required to review the Franchise Agreement prior to submitting its proposal to the City. The City expects the Franchise Agreement will be executed by the selected contractor in substantially the same form as presented in Attachment 2. This review process allows the proposer to prepare the proposal and costs for services with full consideration of its rights and obligations.

Proposer must describe in detail any proposed exceptions to the Franchise Agreement, as applicable. For each exception, proposer shall identify the exception, explain its concern, and provide alternative language for consideration by the City. To document the proposer's exceptions to either agreement and proposed alternative language, proposer shall record its exceptions and proposed alternative language directly in an electronic version of the Franchise Agreement and include a hard-copy, redline and strikeout version, of the Franchise Agreement in its proposal. Any proposed changes to language in either agreement must be made using MS Word redline and strikeout functions only. Other software may not be used. Proposer shall also complete any information in the Franchise Agreement that needs to be tailored to the company's proposal such as, but not limited to, the contractor's name, guarantor's name. Each location in the Franchise Agreement or Disposal Agreement where proposer-specific information is to be inserted is identified with a note to proposer that provides instructions.

The City shall reserve the right to determine if the exceptions are reasonable.

Proposer will be deemed to have accepted and agreed to any provisions of the Franchise Agreement that have not been noted as exceptions in the proposal. If the City chooses to enter into negotiations with a proposer, the noted comments and recommended alternative Franchise Agreement language will serve as a starting point for discussion. With this understanding, the selected contractor may not initiate discussion related to Franchise Agreement language for which no exceptions were noted. The City may request the proposer to sign the Franchise Agreement before City Council makes the final contractor selection.

5.9 Cost Proposals

Pricing for Collection Services and Disposal Services must be entirely specific to the given set of services, and offered on a standalone basis. The offer of contingent pricing by a proposer submitting proposals for both Collection Services and Disposal Services will result in disqualification of the proposer. "Contingent pricing" is defined as pricing that in any way conditions award of and/or pricing of one service on the award or pricing of the other. This provision applies whether the contingent pricing is in addition to, or in lieu of the required separate pricing.

Collection Proposals contain cost forms to be completed by the proposer. Final City fees and rates will be negotiated with the selected contractor. The rates will provide the only source of contractor compensation.

The cost proposal to be prepared by proposer includes operating statistics and detailed costs. Proposer shall submit the cost proposal using the forms provided in Attachment 4. Proposer must carefully review the instructions provided in this Section and comply fully with the requirements set forth herein. The cost proposal includes the two components:

1. Base cost proposal that reflects the base services; and,
2. Cost proposal for alternative services that are being considered by the City.

Proposer shall follow the instructions provided below for preparation of the cost proposal components. A complete set of cost proposal forms described herein shall be included in each copy of the proposal submitted and an electronic copy of the forms is required in Microsoft Excel format pursuant to Section 4.3.4.

The proposal assumptions, operating statistics, and cost proposal information submitted by proposer will be evaluated to determine the reasonableness of the contractor's proposed costs. The cost proposal shall be firm and valid for a period of one year from the submittal date of the proposal.

5.9.1 Guidelines

The proposer shall prepare its cost proposals in accordance with the following guidelines:

1. **Terms based on Agreement**. Contractor shall be governed by the terms and conditions of the Franchise Agreement.

2. **Scope per RFP and Agreement**. The proposed operating statistics and costs on Forms 2 through 11 shall encompass all base collection services, which are identified in Section 3.1 and further described in the Franchise Agreement.

3. **Valid for Rate Period One**. Costs, including proposed maximum rates, shall be effective for the first rate period, which is approximately a 16-month period from September 6, 2017 through December 31, 2018. When completing the cost proposal, proposer shall carefully observe instructions on each form that specify where proposer shall provide operating statistics and costs for 12-month period from September 6, 2017 through September 6, 2018 and where proposer shall provide costs for the 16-month rate period. Capital costs on Form 4 shall be presented in 2016 dollars, reflecting the estimated cost of purchase on or about the contract execution date.

4. **Wage and Benefit Requirements**. Labor costs shall anticipate necessary changes to reflect inflation and negotiated labor contract terms.

5. **Depreciation and Interest**. The base proposal shall reflect the purchase of new collection vehicles and containers. In either case, depreciation and interest expenses related to purchase of vehicles and containers at commencement and during the term of the Franchise Agreement (including possible extensions) need to be anticipated and an average annual amount included for Rate Period One. Proposer shall assume an average vehicle and container life of 10 or more years and plan to depreciate the vehicles and containers over a 10-year period for the purposes of determining depreciation and interest expenses.

6. **Solid Waste Off-Route Transport Costs.** Collection Proposers should assume City Hall as the point of delivery for solid waste collected under the Franchise Agreement. Proposers must include the following information in a separate envelope marked "Solid Waste Off-Route Transport Costs":

a. Identify each type of truck including manufacturer and model that will be used to collect solid waste from carts, bins, roll-offs and compactors.

b. For each identified type of truck, provide the total number of loads per day and per-week.

c. For each identified type of truck, provide a cost for off-route operation in dollars-per-hour regardless of the destination of the material.

d. For each identified type of truck, provide the average tons per load.

7. **Net Processing Costs**. Proposer shall specify the per-ton processing cost(s)_for recyclables, and organics, revenues from the sale of materials, and the net processing cost (or net revenue) on Form 7 of the cost proposal. If proposer plans to use a transfer station to move materials to the processing facility(ies), proposer shall separately identify the per-ton transfer costs in the area provided on Form 7.

8. **Start-Up Costs Annualized**. Start-up costs related to implementation of the Agreement shall be annualized over a 10-year period and shown on Form 6D for the base cost proposal.

9. **Compactor Service**. Costs for servicing roll-off compactors shall be included with drop-box costs on the cost proposal forms. Cost for bin-type compactors shall be included with bin costs on the cost proposal forms.

10. **Procurement Costs**. As described in Section 3.9, the selected contractor shall reimburse the City for an estimated $200,000 of procurement-related expenses, which may be annualized as $20,000 and treated as a non-allowable expense.

11. **Exclusive Construction and Demolition Debris Service**. In addressing the Alternative Service to add the temporary debris box services (primarily C&D service) to the Franchise Agreement, proposers should use the information discussed in Section 2 of the RFP, its best understanding of the construction market, and review of the City's General Plan to develop its proposed tonnages, service levels, and costs.

12. **Non-Allowable Costs**. Costs identified in Exhibit D2 to the Franchise Agreement shall not be included in the cost proposal.

13. **Single-Family Billing Costs.** While it is City intent to transfer single family billing to the collection contractor, please provide the assumptions detailed on Form __. Note that in negotiating final fees, the City will request reimbursement of the share of the City's utility system fixed costs that will no longer be met through provision of City billing for solid waste services.

14. **Service Level Assumptions**. For the purposes of preparing the cost proposal, the City provided the current number of accounts serviced in each rate category on the rate proposal forms (Forms 8, 9, 10, and 11) for the base cost proposal.[2] This account information is based on the best available customer information (which the City has not verified). The proposer shall develop its cost and rate proposal based on its service level assumptions reflecting its: (i) due diligence in reviewing the provided service level information, (ii) assessment of the service needs of the City and its residents and businesses, (iii) the anticipated change in service levels due to new rates, and (iv) other factors that may impact future customer service level needs. The proposer's assumptions shall be presented on Forms 8, 9, 10, and 11 of the base cost proposal (in the columns labeled "estimated number of accounts or occurrences or pulls/week") and on Form 2 of the base cost proposal. If the actual level of service is more than that assumed for the purposes of preparing the proposal, the contractor shall receive and retain more revenues from customer rates. Alternatively, if the actual service levels are less than assumed for proposal purposes, the contractor shall receive less rate revenue from customers.

15. **Tonnage Assumptions**. For the purposes of preparing the cost proposal, proposer shall estimate the annual tonnage of solid waste, recyclable, organic, and on-call clean-up/bulky item materials that will need to be collected in Rate Period One. This annualized amount shall be shown as the total tonnage collected on Form 2 in the base cost proposal and proposer shall allocate the total tonnage to the different service categories based on its own assumptions with regard to historical tonnage collected and future participation in recycling and organics programs. The proposer shall develop its cost proposal using its estimated tonnage levels

[2] The service level information on Forms 8, 9, 10, and 11 does not include the containers located at City facilities.

specified on Form 2. If actual tonnage levels are different, no adjustment will be made to contractor's compensation.

5.9.2 Base Cost Proposal

Proposer is required to submit a base cost proposal using Forms 1 through 11 provided for this purpose in Attachment 4. On the base cost proposal forms, the proposer is required to present operating statistics, its annual cost proposal, and its maximum rate proposal.

The estimated total annual revenue on Form 11 is to tie to the total costs on Forms 5 and 6 (plus or minus $5,000). As described in Section 5.9.1.14 above, the estimated total annual revenues will be based on the contractor's assumptions regarding future customer participation levels. Please note that for the purposes of evaluating the rate proposal, the City may develop its own estimation of the future customer participation levels and use its assumptions to compare one company's rate proposal to other company's rate proposals.

5.9.3 Cost Proposal for Alternative Services

The City has identified several alternative services they may choose to include in the scope of its Franchise Agreement as presented in Section 3.2.3 of the RFP. The City selected these programs as alternative services because they want to evaluate the cost impact and diversion potential before deciding to include the program in the scope of collection services. Proposers are required to submit separate operating statistics and costs for each alternative service reflecting the <u>incremental</u> cost increases/decreases for the alternative service above/below costs reflected in the base cost proposal.

If the proposer anticipates some cost reductions to the base cost proposal, these reductions shall be reflected in the alternative services cost proposal. For example, if disposal costs will decrease as a result of diverting food scraps, the avoided disposal cost shall be shown in the alternative service cost proposal as a negative value. If solid waste route costs will be reduced as a result of the food scraps program, the net impact to collection costs shall be shown for the alternative service (e.g., increased cost of food scraps collection less reduced cost of solid waste collection).

If the City chooses an alternative service, the annual costs presented in the base cost proposal will be adjusted to reflect the selected alternative services. Proposer is required to complete alternative cost proposal Forms 11 and 12 in Attachment 4 documenting its proposed costs for the alternative services.

Note that the total tonnage collected for the alternative services shall balance out to zero because the proposer should show increased recyclable and organic material tonnage collected through higher diversion efforts and the corresponding decrease in the solid waste collected (as a negative value).

5.10 Other Proposal Forms

5.10.1 Secretary's Certificate

Each proposer shall complete and submit the Secretary's Certificate, Attachment 5, documenting the designated representative authorized to bind the proposing company.

5.10.2 Anti-Collusion Affidavit

Each proposer shall complete and submit the Anti-Collusion Affidavit, Attachment 6. The Anti-Collusion Affidavit shall be signed by the designated representative authorized to bind the proposing company as documented on the Secretary's Certificate.

5.10.3 Iran Contracting Act Certification

Each proposer shall complete and submit the Iran Contracting Act Certification, Attachment 4. The Iran Contracting Act Certification shall be signed by the representative identified by the Secretary's Certificate.

5.11 Additional Information (Optional)

Additional information or data relevant to the proposal is optional and may be included by a proposer as an attachment(s) to the proposal.

SECTION 6: DISPOSAL PROPOSAL SUBMITTAL REQUIREMENTS

Section 6 includes the required proposal outline and a description of the specific information proposers must include for Disposal Proposals. Proposer must provide the information identified in this Section as part of its proposal. Failure to provide all the required information may be grounds for rejection of a proposal.

6.1 Outline

Disposal Proposals shall be submitted in accordance with the outline provided in Table 6-1. Items that are not required elements of the proposal are noted as "Optional." At proposer's option, the proposer may include additional information or data on other relevant topics or more detail on the information requested herein that is relevant to the proposal. Proposers should maintain the section numbering in Table 5-2 even if optional services are not proposed, with a statement that the given section is not applicable. Any additional information shall be included as attachments to the proposal.

Table 6-1
Proposal Outline

i.	Title Page
ii.	Cover Letter
iii.	Table of Contents
1.	Executive Summary
2.	Company Description
3.	Transfer and Transport (Optional)
4.	Disposal
5.	Material Drop-Off (Optional)
6.	Acceptance of RFP Terms
7.	Cost Forms
8.	Other Proposal Forms
	A. Secretary's Certificate
	B. Non-Collusion Affidavit
	C. Iran Contracting Certification Act
Attachment	Financial Statements; additional relevant materials may be included at proposer's discretion *(Optional)*

6.2 Cover Letter

The cover letter shall clearly identify the legal entity(ies) submitting the proposal and state whether each entity is a sole proprietorship, partnership, corporation, joint venture, or other. The cover letter shall be signed by the designated representative authorized to bind proposer as documented on the Secretary's Certificate to be submitted in accordance with the requirements below. The cover letter must include the following language:

"With submittal of this Disposal Proposal, _____ (proposer) acknowledges and accepts all terms and conditions of the RFP and Disposal Agreement, except for any exceptions taken in Section __ of our proposal."

The cover letter must also include a list with each RFP addendum issued through this RFP process and the date of receipt, with the following statement: "These addenda were received by and fully reviewed by *contractor name.*"

6.3 Executive Summary

Proposer shall provide a concise executive summary to introduce its proposal; present its strategy and costs; and highlight unique aspects of its approach to servicing the City. The executive summary can be used to highlight any additional programs, service enhancements, or other innovations proposed.

6.4 Company Description

6.4.1 Business Structure

In its proposal, proposer shall:

1. Confirm that proposer is authorized to do business in California;
2. Identify the legal entity that would execute the Disposal Agreement. State whether each entity is a sole proprietorship, partnership, corporation, or joint venture. Describe in detail the relationship of the proposer to the executing entity. If the proposer is a joint venture, describe where the entities have collaborated before;
3. State the number of years the entity(ies) have been organized and doing business under this legal structure. Proposal must include all the names of company's (and executing entities' if different than company's) owners/stockholders with greater than a 10% holding and creditors owed a debt greater than 10% of the company's total assets;
4. Identify other businesses with ownership by principals and/or management; and,
5. Identify each subcontractor to be used, describe their qualifications to provide the service, and summarize all services they will perform. Proposer shall describe any current or past working relationship with the subcontractor(s) in the past five years.

6.4.2 Disposal Experience

Proposer must describe its experience providing disposal services (and transfer services, if proposed) to California jurisdictions, and at the proposed disposal facility as well as at others it owns and operates.

6.4.3 Key Personnel

Identify key personnel, including at a minimum, the names, contact information, and qualifications for the following key personnel:

- Regional Manager (or equivalent)
- Site Manager

Also provide the name, contact information and qualifications for the person who will serve as the primary contact person for the City during the term of the Disposal Agreement.

If specific individuals have not been identified for one or more positions, provide the job description and/or hiring criteria that will be used to select the individual.

6.4.4 Labor Arrangements

Proposer shall identify its plan for arranging labor if they are selected to provide disposal services for the City. Specifically, proposer shall identify if and when they plan to enter into any collective bargaining agreement(s), the labor organization(s) the proposer will work with, and the nature of the collective bargaining agreement(s). If services will be provided under an extension or renewal of an existing labor agreement, provide a copy of the full agreement including all amendments, extensions, and/or renewals. If new labor agreement(s) will be negotiated prior to the commencement of the Disposal Agreement, provide a memorandum of understanding between the labor organization and company outlining the terms and conditions of the agreement, wage rates, employee benefits, and work rules.

6.4.5 Past Performance Record

1. Litigation and Regulatory Actions. Describe past and pending civil, legal, regulatory, and criminal actions (including arrests, indictments, litigation, grand jury investigations, etc.) now pending or that have occurred in the past five years against the key personnel identified above, proposing entity, its parent company, and all subsidiaries owned by proposing entity.
2. Payment of Fines, Penalties, Settlements, or Damages. Provide a statement disclosing any and all fines, penalties (including liquidated damages or administrative fees in excess of $25,000 in any one calendar year), settlements, or damages of any kind paid by proposer, its parent company and subsidiaries, to public agencies in the past five years. For each payment, list the amount the company has paid, the name of the jurisdiction to which damages were paid, and the event(s) which triggered the damages. Identify what personnel and/or policy changes the company made in response to such incidents (e.g., terminated or reassigned employees involved, new process protocols, etc.).

The requirements of Section 6.4.5 apply to:

1. Disposal operations and transfer operations (as applicable) conducted in the Greater Bay Area (defined as Alameda, Contra Costa, Monterey, Napa, San Mateo, Santa Clara, Solano, and Sonoma counties).

2. Proposers who operate in multiple counties or states with independent management structures need only report such actions relative to the operations managed by the management team proposed to be responsible for this contract.
3. Lawsuits which involved only claims for personal injury or property damage arising from vehicle accidents which resulted in defense verdicts or in judgments against defendant, or settlements of less than $10,000, need not be disclosed.

The occurrence of past or pending civil, legal, regulatory, or criminal actions does not automatically disqualify a company from participating in this process. However, failure to report such actions, whether discovered before or after the City executes the Disposal Agreement, shall be considered a material omission and may form the basis for disqualifying a proposer or terminating the Disposal Agreement.

6.4.6 Financial Information

1. Financial Statements. Submit audited financial statements for the most-recently completed fiscal year for the legal entity(ies) that would execute the Disposal Agreement. All such statements are to be prepared in accordance with Generally Accepted Accounting Principles applied on a consistent basis and shall be audited in accordance with Generally Accepted Auditing Standards by an Accountant certified in the State of California and shall include a statement by the chief financial officer (CFO) of the entity(ies) that there has been no material adverse change in such condition or operations as reflected in the submitted balance sheet and income statements since the date on which they were prepared. The proposer may submit an electronic version of the audited financial statements or may provide a website address linking to audited financial statements if available on the proposer's website. Printed copies of the statements do not need to be submitted with the proposal if an electronic copy is provided or web access is made available.
2. Financing Plan. To the extent that provision of services under the Disposal Agreement will trigger the need to significant capital investment, describe the plan for financing all capital requirements (i.e., those listed on Cost Proposal Form 4) in a "Sources and Uses of Funds" format, which describes the sources of required capital (e.g., banks, leasing companies, cash reserves, etc.) and uses (e.g., property, trucks, equipment, containers, reserves, etc.). Attach supporting documents (e.g., letters from banks or leasing companies) that demonstrate your ability to implement the financing plan.

6.5 Transfer and Transport (Optional)

If more than one site is proposed, the information should be provided separately for each site.

6.5.1 General Site Information

Provide the following:

- Describe the facility site location, owner, and operator.

- General operating parameters, including days and hours of operation, ability to accept materials when not in full operation, average and guaranteed turn-around times for vehicles delivering material, and any other factors that may materially affect material delivery or site operation.
- Summary description of transfer methods.
- Method of tracking tonnage, and if the facility is receiving tonnage from other jurisdictions, how the tonnages from each jurisdiction are separately accounted for.

6.5.2 Permits and Regulatory Compliance

Provide contact names for regulatory agencies that monitor the facility's compliance with applicable local, state, and federal laws and regulations including name of the regulatory agency, contact person's title, and telephone number.

6.5.3 Transfer and Transport Services

- Permitted Throughput. State the permitted daily throughput and the average daily throughput.
- Capacity Guarantee. Provide a written commitment guaranteeing throughput capacity (on a daily basis) for each of the proposed materials. Proposer shall describe how it calculated daily capacity needs. If a proposed facility is not owned and operated by the proposer, the proposer shall include a letter of commitment from the facility owner/operator guaranteeing capacity.
- Expanded or New Facility. If the capacity to be guaranteed to the City relies on an expansion of the transfer station or development of a new transfer station, describe the expansion/development plans, additional capacity to be constructed, schedule for expansion/development, and permitting status of the expansion/development plan.
- Diversion Activities. If the proposer plans to conduct any manual sorting of solid waste at the transfer station prior to loading out for delivery to the disposal facility, proposer shall describe what types of recovery activities it plans, the types of materials targeted for recovery, and the anticipated diversion level as a percentage of incoming tonnage.
- Contingency Plans. Discuss contingency plans for providing services in the event that for whatever reason and on a temporary basis, some or all of the guaranteed capacity is not available at the proposed facility, including proposing alternative facilities for temporary use.

6.6 Disposal

If more than one site is proposed, the information should be provided separately for each site.

6.6.1 General Site Information

Provide the following:

- Describe the facility site location, owner, and operator.

- General operating parameters, including days and hours of operation, ability to accept materials when not in full operation, average and guaranteed turn-around times for vehicles delivering material, and any other factors that may materially affect material delivery or site operation.
- Summary description of transfer or processing methods.
- Method of tracking tonnage, and if the facility is receiving tonnage from other jurisdictions, how the tonnages from each jurisdiction are separately accounted for.
- At proposer's option, proposer may highlight any other features of facility site operations.

6.6.2 Permits and Regulatory Compliance

Provide contact names for regulatory agencies that monitor the facility's compliance with applicable local, state, and federal laws and regulations including name of the regulatory agency, contact person's title, and telephone number.

6.6.3 Disposal Services

- Permitted and Remaining Site Capacity. State the permitted and remaining capacity of site, if applicable, and the average daily quantity of solid waste disposed.
- Capacity Guarantee. Provide a written commitment guaranteeing capacity (on a daily basis and annual basis) for the City's solid waste at commencement of the agreement and through the 20 year term. Proposer shall describe how it calculated the daily and annual capacity needs. If a proposed facility is not owned and operated by the proposer, the proposer shall include a letter of commitment from the facility owner/operator guaranteeing capacity.
- Expanded or New Facility. If the capacity to be guaranteed to the City relies on an expansion of the disposal facility or development of a new disposal facility, describe the expansion plans/development plans, additional capacity to be constructed, schedule for expansion, and permitting status of the expansion plan.
- Import Restrictions or Fees. List any import restrictions, taxes, or fees that will be applicable to the receipt of materials from the City. If there is an import restriction on accepting solid waste, organic materials, or recyclable materials (as proposed) from outside of the local jurisdiction, describe the process to have the import restriction waived.
- Assurances. Discuss the financial mechanisms that are in place to effectively indemnify site users.
- Contingency Plans. Discuss contingency plans for providing services in the event that for whatever reason and on a temporary basis, some or all of the guaranteed capacity is not available at the proposed facility, including proposing alternative facilities for temporary use.

6.7 Material Drop-Off (Optional)

Proposers are requested to provide an option for material drop-off as described in Section 3.3.3. Proposers should describe all aspects of the program including: the location, ownership, permitting and zoning compliance, and availability of the proposed site; scheduled availability of the site for public use;

estimated tonnages collected; program publicity, and; verification of residency. As discussed in Section 3.2.1 and in Table 3-4, Disposal Proposals must address the disposal of material from City facilities and special events at not added cost of

6.8 Rate Proposal

Pricing for Collection Services and Disposal Services must be entirely specific to the given set of services, and offered on a standalone basis. The offer of contingent pricing by a proposer submitting proposals for both Collection Services and Disposal Services will result in disqualification of the proposer. "Contingent pricing" is defined as pricing that in any way conditions award of and/or pricing of one service on the award or pricing of the other. This provision applies whether the contingent pricing is in addition to, or in lieu of the required separate pricing.

Proposers shall complete the Rate Forms provided in Attachment 4, as detailed on the "Instructions" worksheet, with inclusion of completed forms as Section 7 of the proposal. In general:

1. Proposers must provide a discrete proposed rate and specified rate components for disposal and for transfer and transport as applicable.
2. The cost of providing the "Material Drop-Off" services described in Section 6.7 should be included in the contractor's component of the proposed disposal rate.
3. Each per-ton rate includes the following components. Proposers must address each component.
   a. Facility operation, inclusive of all costs associated with owning, operating and maintaining the facility including all day-to-day operations, maintenance, environmental and regulatory monitoring and compliance. Includes closure and post-closure maintenance, and financial assurance for disposal facilities.
   b. Government fees assessed by various governmental or regulatory agencies.
4. Proposers must provide a per-hour rate for transport costs for transfer facilities and the related assumption(s) for tons per load.

6.9 Acceptance of Franchise Agreement

Proposer are required to review the Disposal Agreement, as applicable prior to submitting its proposal to the City. The City expects the Disposal Agreement will be executed by the selected contractor in substantially the same form as presented in Attachment 3. This review process allows the proposer to prepare the proposal and costs for services with full consideration of its rights and obligations.

Proposer must describe in detail any proposed exceptions to the Disposal Agreement. For each exception, proposer shall identify the exception, explain its concern, and provide alternative language for consideration by the City. To document the proposer's exceptions to either agreement and proposed alternative language, proposer shall record its exceptions and proposed alternative language directly in an electronic version of the Disposal Agreement and include a hard-copy, redline and strikeout version, of the Disposal Agreement in its proposal. Any proposed changes to language in either agreement must be made using MS Word redline and strikeout functions only. Other software may not be used. Proposer

shall also complete any information in the Disposal Agreement that needs to be tailored to the company's proposal such as, but not limited to, the contractor's name, guarantor's name. Each location in the Disposal Agreement where proposer-specific information is to be inserted is identified with a note to proposer that provides instructions.

The City shall reserve the right to determine if the exceptions are reasonable.

Proposer will be deemed to have accepted and agreed to any provisions of the Disposal Agreement that have not been noted as exceptions in the proposal. If the City chooses to enter into negotiations with a proposer, the noted comments and recommended alternative Disposal Agreement language will serve as a starting point for discussion. With this understanding, the selected contractor may not initiate discussion related to Disposal Agreement language for which no exceptions were noted. The City may request the proposer to sign the Disposal Agreement before City Council makes the final contractor selection.

6.10 Other Proposal Forms

6.11.1 Secretary's Certificate

Each proposer shall complete and submit the Secretary's Certificate, Attachment 5, documenting the designated representative authorized to bind the proposing company.

6.11.2 Anti-Collusion Affidavit

Each proposer shall complete and submit the Anti-Collusion Affidavit, Attachment 6. The Anti-Collusion Affidavit shall be signed by the designated representative authorized to bind the proposing company as documented on the Secretary's Certificate.

6.11.3 Iran Contracting Act Certification

Each proposer shall complete and submit the Iran Contracting Act Certification, Attachment __. The Iran Contracting Act Certification shall be signed by the representative identified by the Secretary's Certificate.

6.11 Additional Information (Optional)

Additional information or data relevant to the proposal is optional and may be included by a proposer as an attachment(s) to the proposal.

SECTION 7: PROPOSAL EVALUATION PROCESS

7.1 Overview

Section 7 details the sequential proposal evaluation process for the Collection Proposals and Disposal Proposals. An evaluation team will conduct a detailed evaluation of both sets of proposals, with facilitation from HF&H staff. The City Council will review the evaluation team's evaluation reports for the Collection Proposals and Disposal Proposals and select the future contractor for each. City staff will negotiate the final Franchise Agreement and Disposal Agreement with the selected contractor(s). The City Council will approve the final agreements. The City or its consultant may seek proposer clarifications at any point in the process. The following details the sequence of steps the City will follow for the evaluation and contractor selection process.

7.2 Initial Review

The City will evaluate both Collection Proposals and Disposal Proposals against the following minimum requirements. Proposals that fail the initial review for reasons other than an offer of contingent pricing may receive further evaluation at the sole discretion of the City.

- A minimum of 10 years of experience in providing the proposed or comparable services to municipal governments at a similar scale.
- Comprehensiveness and consistency of the proposal with respect to this RFP.
- Mathematical logic and accuracy.
- Review of proposer exceptions to the RFP or Agreement to determine if material exceptions could hinder successful negotiation of an agreement.
- Determination whether, for entities submitting both Collection Proposals and Disposal Proposals either proposal contains contingent pricing as defined in Sections 5.9 and 6.8.
- Compliance with all other RFP and procurement procedures.

7.3 Disposal Proposal Evaluation and Contractor Selection

Disposal Proposals will be evaluated, the new disposal contractor will be selected, and negotiation of the new disposal agreement will be completed prior to evaluation of the Collection Proposals. However, as discussed below, the solid waste off-route costs provided by Collection Proposers will be used in evaluating Disposal Proposals.

The factors that will be considered by the evaluation team in evaluating the Disposal Proposals include the criteria identified below. Application of the criteria will be tailored to transfer and transport (if applicable), disposal and material drop-off services.

Experience and Qualifications (30%)

- Operating Experience. Demonstrated experience of company providing the requested or similar services to other jurisdictions.
- Performance Record. Review of company's history with litigation and regulatory action (e.g., nature of past and pending civil, legal, regulatory, and criminal notices of violation and actions; history and nature of payments of liquidated damages, penalties, damages, etc.) and regulatory compliance related to equipment and facilities including compliance with land use permits, storm water discharge permits, State highway requirements, etc.
- Financial Stability. Financial strength and ability of company to provide financial assurance of contract performance and of long-term regulatory compliance.

Technical Approach (30%)

- Proposed facility disposal site and transfer site (as applicable) considerations such as, but not limited to:
  - Facility Location and Accessibility - Reasonableness of facility location and accessibility for delivery.
  - Operations - Reasonableness of key operating characteristics (i.e., operating days per week, turnaround time of vehicles, load checking programs, reporting, etc.).
  - Guaranteed Facility Throughput – Adequacy of daily throughput guarantees at the transfer station for the term of the agreement (if transfer services are proposed).
  - Permitted and Guaranteed Capacity – Adequacy of the capacity on a daily basis and for the length of the agreement (if disposal services are proposed).
  - Facility Expansion or Modification Plans (if any) – Reasonableness of any plans to expand or modify an existing facility, and the impact on acceptance of tonnage if completion is delayed.
  - New Facility Development Plans (if any) – Reasonableness of any new facility development plans, and impact on acceptance of tonnage if development of a new facility is delayed.

Environmental Considerations (10%)

Evaluation may include, but not be limited to:

- Diversion Ability (if applicable) – The nature and reliability of proposed diversion of solid waste from landfill disposal.
- Use of Alternative Fuels
- Odor/Site Acceptability

Acceptance of RFP and Franchise Terms (30%)

- Number and Nature – The number and nature of exceptions to the RFP and Franchise Agreement relative to other proposers.
- Likelihood of Prompt and Successful Negotiations – The likelihood that the City will be able to promptly and successfully negotiate changes to and finalize the Franchise Agreement with the proposer.

Rate Proposals

- Reasonableness - The reasonableness, accuracy, and consistency of the proposer's operational, labor, capital, cost, rate, and rate revenue proposals.
- Competitiveness - The competitiveness of company's proposed rates relative to rates proposed by others.

During disposal evaluation, the evaluation team will use the off-route transport pricing provided by Collection Proposers to determine the full cost to the City for use of the proposed transfer and disposal sites identified in each Disposal Proposal.

For the purposes of evaluating the rate proposals, the City may: develop its own estimation of the future tonnage levels and use its assumptions to compare one company's rate proposal to other companies' rate proposals; estimate the annual value, and the net present value of a potential contract based on the proposed rates; estimate the cost of the collection vehicles transporting materials to the proposed facilities and consider such costs in the evaluation, and/or; estimate the cost of the transfer vehicles in transporting materials to the proposed facilities and consider such costs in the evaluation.

The evaluation team will provide the results of its evaluation to the Council, and seek direction regarding negotiating a final Disposal Agreement. The evaluation team may present the general results of the evaluation to Council prior to presenting the full results, may elect to bring one or more executed Disposal Agreements to the Council for its review, or may take other similar steps. The evaluation team will then return with an executed Disposal Agreement for final Council approval.

7.4 Collection Proposal Evaluation and Contractor Selection

Following award and execution of the Disposal Agreement, the evaluation team will evaluate the Collection Proposals. The evaluation includes review of the qualitative criteria identified below, and evaluation of costs. The relative weighting of the qualitative criteria is identified below for each criteria.

Experience and Qualifications (10%)

- Collection and Processing Experience
  - Demonstrated experience of company providing the requested or similar services to other jurisdictions.

- Demonstrated experience of company's ability to implement new collection and processing services and new franchise agreements and obligations that are similar to the City's services in comparable sized communities.
- If the proposer is a joint venture, demonstrated experience of parties working together.
- Satisfaction of company's references with the services received in the past 10 years (including, but not limited to, implementation, customer service, call center, billing, payment of fees, reporting, and the handling of contractual issues).

- Key Personnel Qualifications. Extent and relevance of the qualifications and experience of key personnel proposed for the transition team and on-going management of the City's collection and processing services.
- Performance Record. Review of company's history with litigation and regulatory action (e.g., nature of past and pending civil, legal, regulatory, and criminal actions; history and nature of payments of liquidated damages, penalties, damages, etc.) and regulatory compliance related to equipment and facilities including compliance with land use permits, storm water discharge permits, State highway requirements, etc.
- Financial Stability. Financial strength and ability of company to acquire equipment and provide financial assurance of performance based on review of its audited financial statements and its proposed financing plan and the relationship of the City's contract to the company's total annual revenues.

Technical Approach (40%)

A. Technical Proposal for Base Collection Services

1. Collection Approach – Reasonableness and reliability of the proposed collection methods, technology, equipment, containers; productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics).
2. Processing and Marketing - Realistic plan and guaranteed capacity for recyclable materials, and organic materials.
3. Public Outreach Program – Compatibility (relative to other proposers) of the proposed outreach program, staffing levels, and program ideas with the needs of the City and the requirements of the Franchise Agreement; and, the quality of sample materials relative to other proposers.
4. Multi-Family and Commercial Recycling Technical Assistance – Proposed approach to providing multi-family and commercial customers with comprehensive, results-oriented recycling technical assistance.
5. Customer Service – Compatibility (relative to other proposers) of customer service approach and staffing levels with the needs of the City and the requirements of the Franchise Agreement.
6. Billing System – Compatibility (relative to other proposers) of billing approach, procedures for handling customers, and coordination plan with City.

7. Implementation Plan - Reasonableness of implementation schedule and ability to meet deadlines (e.g., reasonableness of equipment procurement schedules, implementation staffing levels, new corporation or maintenance yard development, and contingency plans).

8. Facilities for Equipment, Maintenance, and Administration – Compatibility (relative to other proposers) of plan for providing the facilities needed for equipment storage; parking, maintenance, administration; and, if applicable, transfer of materials. Level of assurance provided, if any, with regard to site acquisition and timely development of necessary facilities.

10. Customer Convenience – Relative degree to which proposed services provide for customer convenience.

11. Other – Other technical considerations may be evaluated.

B. Technical Proposals for Alternative Services

- Collection Approach (if applicable) – Reasonableness and reliability of the proposed collection methods, technology, equipment, containers; productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics).
- Customer Convenience – Relative degree to which proposed services provide for customer convenience.
- Other - Other technical considerations may be evaluated.

Diversion Plans (20%)

- Diversion Ability (if applicable) – The nature and reliability of proposed diversion Base Services and Alternative Services programs to divert solid waste from landfill disposal, and to comply with AB 341 and AB 1826.

Acceptance of RFP and Franchise Terms (30%)

- Number and Nature – The number and nature of exceptions to the RFP and Franchise Agreement relative to other proposers.
- Likelihood of Prompt and Successful Negotiations – The likelihood that the City will be able to promptly and successfully negotiate changes to and finalize the Franchise Agreement with the proposer.

Cost Proposals

- Reasonableness - The reasonableness, accuracy, and consistency of the proposer's operational, labor, capital, cost, rate, and rate revenue proposals.
- Competitiveness - The competitiveness of company's proposed costs relative to costs proposed by others.

The evaluation team will provide the results of its evaluation to the Council, and seek direction regarding negotiating a final Franchise Agreement. The evaluation team may present the general results of the evaluation to Council prior to presenting the full results, may elect to bring one or more executed

Franchise Agreements to the Council for its review, or may take other similar steps. The evaluation team will then return with an executed Franchise Agreement for final Council approval.

AMENDMENT No. 1 TO AGREEMENT
FOR CONSULTATION AND OTHER SERVICES

This Amendment is entered into this 16th 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 HF&H Consultants LLC, a California Limited Liability Company (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an Agreement on December 2, 2014 entitled "Consultant Services Agreement between the City of Milpitas and HF&H Consultants LLC" ("Agreement") for solid waste procurement services in the amount of $55,525 with an expiration date of December 1, 2019; and

WHEREAS, the parties desire to increase scope of work and compensation by $49,925 for additional consultation services.

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

1. Section 2, entitled "Compensation" of the Agreement is amended in its entirety to read as follows:

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed One Hundred Five Thousand Four Hundred Fifty Dollars ($105,450) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2. Exhibit A, entitled " Scope of Work " of the Agreement is amended in its entirety and to be replaced to read as shown in the attached Exhibit A-1.

3. Exhibit B, entitled "Scope of Work" of the Agreement is amended to add Table B-1 as shown in the attached Exhibit B-1 for additional scope of work under the Agreement.

4. The Consultant agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated December 2, 2014, between HF&H Consultants LLC, 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 on this page.

APPROVED BY:

CITY OF MILPITAS

_____
Thomas C. Williams, City Manager

_____
Steven J. Machida, Director of Engineering

CONSULTANT

_____
Consultant Name and Title

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

Exhibit A-1 – SCOPE OF WORK.

PURPOSE

The City's intent is to provide solid waste management system for its community that protects the public health in a sustainable manner, conforms to State regulations, and positively benefits the quality of life of its residences and business community everyday. Regulations, cultural values, and industry best practices have changed since the City entered its current collection, processing, and disposal agreements with Republic Services more than 20 years ago. While generally successful (as indicated by rates and waste diversion levels), the City is being challenged in its ability to respond to these changes in the manner that it adjusts costs, determines rates, and administers the agreement. This challenge will increase as regulations continue to change and market forces drive up the cost of processing and disposal options.

The City desires to plan for its future collection, diversion, and disposal demands in a manner that is reflective of current and projected conditions, regulations, and opportunities. By acting now, the City will anticipate its needs, evaluate its options, and act strategically with an understanding of its long-term best interest. The primary object of this project engagement is to assist the City through the process of selecting the most advantageous option and proceeding with implementation of procurement for solid waste, recyclables, and yard trimmings collection, diversion, processing, and disposal services.

Task 1 – Evaluate Future Options
Consultant shall evaluate two primary options: extend the solid waste contract with Republic Services or issue an RFP to multiple vendors. Consultant shall analyze recently negotiated municipal service contracts and develop pros/cons and cost/benefits for each option. This task shall include three (3) conference calls with staff. This task shall also include three (3) presentations to governing bodies, such as City Council or its committees.

Deliverables:
1. Prepare a technical memorandum document findings.
2. Participate in three (3) conference calls with City staff to discuss options.
3. Prepare power point presentations and attend three (3) public meetings before the City Council or other committees or commissions.

Task 2 –Policy and Program Development
City Council will select an option. The level of effort to develop and implement the extension with the current service provider may be less than the effort to develop and implement a vendor selection process and build a service contract. Therefore this task is to provide time and materials to start implementation as directed by City Council and staff. This task includes conference calls and meetings as needed.

Deliverables: To be determined at a later date based on direction from City Council.

Task 3 –Pre-RFP Release Outreach
Consultant shall communicate with potential proposers to obtain up-to-date information regarding solid waste services. Consultant shall prepare materials for, attend, and lead discussion at community outreach meetings.

Task 4 –Development of RFP
Consultant shall complete a draft of the request for proposals (RFP) for City staff review, meet with staff to discuss their comments and potential changes, and finalize the RFP for release following Council review.

Task 5 –Development of Agreements

Consultant shall complete drafts of the collection and processing agreement and the disposal agreement for City staff review and finalize draft agreements for release with the RFP.

Task 6 –Pre-RFP Release Council Meetings
Consultant shall prepare materials for and attend two Council meetings.

Task 7 –RFP Release
Consultant shall manage the release of the RFP, including developing draft and final proposer lists with updated contact information, and posting the RFP package to a dedicated webpage for the City's RFP process. Consultant shall facilitate the pre-proposal meeting to present the RFP and address proposer questions. Consultant shall also manage the process of responding in writing to proposers' written questions (up to 100) through several RFP addenda. Consultant shall prepare draft responses to the questions for City review and finalize the addenda for posting to the procurement website.

Task 8 –Initial Review of Proposals
Consultant shall conduct the initial evaluation of both the collection and disposal proposals to determine if each proposal meets the minimum standards approved by the City Council, such as minimum qualifications, completeness of each proposal, nature of material exceptions to the agreements, and lack of contingent pricing. Consultant shall also review the mathematical accuracy and logical consistency of pricing proposals and seek any required clarifications at this phase so that such clarifications are in-hand prior to the Evaluation Committee's review of proposals. Consultant shall discuss the initial review with City staff and identify likely next steps.

Task 9 – Engagement Management
Consultant will prepare and amend detailed work plans, monitor engagement progress, and provide sufficient resources to ensure timely completion of the engagement, review analytical results and interim findings, review the draft and final reports, and respond to questions regarding the progress of the engagement and other issues. This task also includes organization of work papers related to the project.

Exhibit B-1 Compensation Schedule
Table B-1

		Vice President $235	Senior Manager $225	Senior Associate $170	Associate $135	Administrative $100	Total Hours	Proposed Cost	Notes	Work Products
Task 1	**Evaluate Future Options**									
	Meet with Council to determine course of action.	0	0	0	0	0	0	$0	Task completed under original budget.	Council presentation.
	Task 1	**0**	**0**	**0**	**0**	**0**	**0**	**$0**		
Task 2	**Policy and Program Development**									
	Preparation for, and faciltiation of four planning meetings with staff, and related coordination on key issues such as billing and debris boxes.	2	2	0	0	0	4	$920	Task largely completed under original budget. Remaining budget is to respond to City requests for input., as needed.	Materials to guide decision making on key policy and program issues, with lists of followup activities.
	Task 2	**2**	**2**	**0**	**0**	**0**	**4**	**$920**		
Task 3	**Pre-RFP Release Outreach**									
	Three outreach meetings and ongoing communication with interested parties.	0	8	0	0	2	10	$2,000	Task largely completed under original budget, with the exception of finalizing and making the community presentation on May 20th and potential proposer followup.	Three presentations; meetings /phone calls with 6-8 proposers.
	Task 3	**0**	**8**	**0**	**0**	**2**	**10**	**$2,000**		
Task 4	**Development of RFP**									
	Develop draft and final versions of the RFP and cost forms.	4	18	0	20	10	52	$8,690	Initial work on draft RFP completed under original budget. Fee estimate addresses completing draft and final versions.	Draft and final versions of the RFP and costs forms.
	Task 4	**4**	**18**	**0**	**20**	**10**	**52**	**$8,690**		

Project No: HF&H Consultants LLC June 16, 2015
Project Name: CIP 3401 Solid Waste Procurement Services

		Vice President	Senior Manager	Senior Associate	Associate	Administrative	Total	Proposed	Notes	Work Products
		$235	$225	$170	$135	$100	Hours	Cost		
Task 5	**Development of Agreements**									
	Develop draft and final versions of two agreements.	4	24	16	0	4	48	$9,460	Initial work on draft agreements completed under original budget. Fee estimate addresses completing draft and final versions of both agreements.	Template/sample agreements; two sets (collection and disposal) of draft and final agreements for City review.
	Task 5	**4**	**24**	**16**	**0**	**4**	**48**	**$9,460**		
Task 6	**Pre-RFP Release Council Meetings**									
	Prepare for and present materials at two Council meetings. Includes coordination with City staff.	6	10	0	0	4	20	$4,060	First of two meetings was conducted under the original budget. Fee estimate addresses preparation for, and attendance at June 16 Council meeting.	Two presentations.
	Task 6	**6**	**10**	**0**	**0**	**4**	**20**	**$4,060**		
Task 7	**RFP Release; Activities During Proposal Development**									
	RFP Release	0	2	0	0	8	10	$1,250	HF&H to set up procurement webpage, finalize proposers release list, upload materials to website, and advertise RFP availability.	Webpage, email communications.
	Pre-Proposal Meeting in Late July	0	6	0	0	1	7	$1,450	HF&H to faciltiate meeting to disucss RFP and process with proposers	Meeting agenda.
	Develop and Distribute Addenda - July through September	2	16	4	4	6	32	$5,890	HF&H to develop draft answers to proposer questions for City review, and for release in up to three addenda.	Written answers and draft addenda.
	Task 7	**2**	**24**	**4**	**4**	**15**	**49**	**$8,590**		

Project No: HF&H Consultants LLC June 16, 2015
Project Name: CIP 3401 Solid Waste Procurement Services

	Vice President	Senior Manager	Senior Associate	Associate	Administrative	Total	Proposed	Notes	Work Products
	$235	$225	$170	$135	$100	Hours	Cost		
Task 8 Initial Review of Proposals									
Initial HF&H evaluation of both sets of proposals to determine if all minimum standards are met.	1	8	0	10	12	31	$4,585	HF&H to perform initial compliance review of proposals and perform mathematical accuracy and logical consistency review of costs.	Conference call with City staff to discuss results of initial review.
Task 8	**1**	**8**	**0**	**10**	**12**	**31**	**$4,585**		
Work Continuation									
Provides for continuation of critical path work pending City review and approval of fee estimate for next steps.	6	28	10	4	0	48	$9,950		
Subtotal	**6**	**28**	**10**	**4**	**0**	**48**	**$9,950**		
Engagement Management									
	2	4	0	0	0	6	**$1,370**		
Total Costs									
Labor	27	126	30	38	47	268	$49,625		
Out-of-Pocket Expenses							$300		
Total Budget							**$49,925**		

MEMORANDUM

Office of the City Attorney

Date: June 4, 2015

To: City Attorney Subcommittee;

Mayor Esteves and Members of the City Council

From: Michael Ogaz, City Attorney M.O.

Subject: City Attorney's Office 2015-2016 Budget

At the City Attorney Subcommittee meeting on May 29, 2015, there were questions asked and additional information requested on (i) the work duties of the City Attorney's Office; (ii) comparable hourly rates of outside legal services to the City Attorney's Office; and (iii) the proposed hiring of a Deputy City Attorney. The purpose of this memorandum is to provide additional information and clarification to the City Attorney Subcommittee and City Council on these issues. Additionally, the City Attorney became aware at the May 29th Subcommittee meeting that documents and information were provided by the City Manager's Office to the City Attorney Subcommittee. These documents and information were never posted online, made available to the public, nor disclosed to the City Attorney's Office. As of the time of issuance of this memorandum, the City Attorney's Office still has not received all of the requested documents and information provided by the City Manager's Office to the City Attorney Subcommittee and therefore, is unable to fully engage, respond, and provide relevant information to the City Attorney Subcommittee and City Council.

What does the City Attorney's Office do?

The City of Milpitas, like many other general law cities, is governed by a myriad of complicated federal, State and local laws. Almost all operations of the City are governed by one law or another. The City Attorney's Office protects the interests of the Milpitas residents, businesses, and community by ensuring that the City, in its day-to-day operation at every level of City government, is in compliance with all applicable laws, regulations, and policies. There is significant legal exposure, both civil and criminal, for violating certain laws.

The day-to-day work of the City Attorney's Office generally includes (i) reviewing all staff reports going to the City Council for compliance with the Brown Act, CEQA, and other applicable City, State and federal laws; (ii) reviewing and drafting resolutions, ordinances and contracts; (iii) responding to countless legal questions from City staff; (iv) researching legal issues associated with City operations; (v) attending meetings to discuss the best legal approach on various municipal issues; (vi) preparing documents for and responding to administrative complaints, hearings, and litigation; and (vii) reviewing and advising on Public Records Act requests and subpoenas. For example of the volume of such matters in 2014, the City Attorney's Office reviewed over 240 staff reports for compliance with the Brown Act, CEQA, and other laws, reviewed or prepared over 100 resolutions, agreements or amendments and ordinances, responded to over 1500 legal questions from City staff, attended over 100 internal and public meetings (over 500 hours), and spent over 400 hours assisting on documents production in responses to Public Records Act request and subpoenas.

Attachment A includes lists of duties for each position in our Office.

What is the comparable cost of outside legal services?

The City Attorney's Office provides cost-effective legal services for the Milpitas community at an annual cost of approximately $1 million for three (3) full-time employees. Although this may sound like a high number, in comparison to outside legal services, it is a fraction of the cost. With three (3) full-time employees consisting of City Attorney Mike Ogaz, Assistant City Attorney Johnny Phan, and Executive Secretary/Paralegal Susan Barrett, the City is receiving more than 120 hours per week (40 hours per week x 3 employees) in legal services, or, more than 6,240 hours a year (2,080 hours per year x 3 employees).

In reviewing the hourly rates for outside legal services, the conservative estimate for the average rate for a Partner in a law firm is approximately $350.00 per hour. If you contracted for a full-time Partner, the equivalent of a full-time City Attorney, it would cost the City approximately $728,000 per year ($350.00 per hour x 2080 hours), while the total compensation cost for the City Attorney is only $326,664 per year. Similarly, the numbers are comparable for the Assistant City Attorney, Deputy City Attorney and Paralegal. See tables below.

	City Attorney	**Partner**
Hourly Rate	$157.05	$350.00
Annual Cost	$326,664 per year	$728,000 per year
Overtime (40+ Hours)	None	$350.00 per hour

	Assistant City Attorney	**Senior Associate**
Hourly Rate	$115.55	$275.00
Annual Cost	$240,358 per year	$572,000 per year
Overtime (40+ Hours)	None	$275.00 per hour

	Deputy City Attorney	**Associate**
Hourly Rate	$93.04	$225.00
Annual Cost	$193,540 per year	$468,000 per year
Overtime (40+ Hours)	None	$225.00 per hour

	Exec. Secretary/Paralegal	**Paralegal**
Hourly Rate	$75.10	$135.00
Annual Cost	$156,218 per year	$280,800 per year

	City Attorney's Budget	**Outside Legal Services Cost**
Total Annual Cost	**$916,780**	**$2,048,800**

What the numbers reveal is simple. The cost of comparable outside legal services is drastically higher than having in-house services. Therefore, other comparable size cities with the same complexity as Milpitas, such as Mountain View and Palo Alto, have a well-funded City Attorney's Office whose budgets far exceed the Milpitas City Attorney's Office budget.

Conclusion

In conclusion, the City Attorney's Office can continue to operate in the same capacity with three (3) full-time employees consisting of a City Attorney, Assistant City Attorney and Executive Secretary/Paralegal. However, with a Deputy City Attorney, the Office would be able to handle more litigation in-house, saving Milpitas taxpayers a significant amount of money and assist in the day-to-day operation of the City, thereby providing greater service. More importantly, there is no fiscal reason to outsource the City Attorney's Office. The City of Milpitas has gone down this road in the past several times throughout its history and, each time, the taxpayers of Milpitas ended up paying more for legal services with outside counsel while receiving less service.

ATTACHMENT A

City Attorney Task/Duty List

- Advise the City Council regarding daily legal questions that arise and particularly on items that come before them on Council Meeting Agendas.
- Advise Human Resources staff regarding all personnel matters, including grievances, labor negotiations, workplace investigations and disciplinary matters.
- Advise the Fire Department on contracts and transactional matters.
- Advise the Police Department on contracts and transactional matters.
- Defend Police Officer Personnel files on Pitchess motions in Court including preparation of all pleadings necessary.
- File and appear on Weapons Petitions filed in Superior Court on behalf of the Police Department.
- Review and assign all lawsuits filed against the City; forward to ABAG those suits that might fall under that insurance pooling coverage.
- After assignment, supervise either in-house attorney or outside counsel on case handling and direction, including communicating with employee defendants regarding their rights and concerns.
- Advise the City Clerk's Office with regard to elections matters, agenda matters and FPPC filings and compliance.
- Advise the City Manager and his staff regarding all legal matters of the City.
- Work with the Mayor and Council, City staff, particularly in the Utilities section, regarding the odor problem and the City response.
- Work with citizens groups regarding the odor problem, attending their meetings periodically and communicating by telephone and email to keep them informed and involved.
- Work with three separate attorney firms regarding litigation initiated by the City to combat the odor problem.
- Initiated a comprehensive RFP process to seek expert outside counsel to advise the City and create a game plan regarding the odor problem at Newby Island.
- Supervise the Office of the City Attorney, including its budget and expenses, review and sign all invoices and purchase requisitions; review and sign time cards and otherwise oversee administrative tasks of the Department.
- Assist the Departments with Public Records Act requests, providing advice and also preparing the response required by law in a variety of cases.
- Respond to telephone inquiries from the public and the press regarding legal matters pertaining to City activities.
- Meet with citizens regarding legal issues at the request of the Mayor and Council. Examples are taxi ordinance and innovative manufacturing proposal.
- Attend weekly agenda meetings of the Department as well as the department-wide agenda meeting and the weekly Department Head meeting and other meetings requested by staff and the Mayor.
- Prepare a yearly budget for the Department based on the expected needs and expenses projected for the upcoming fiscal year; meet with City Manager and Finance Director regarding the proposal and adjust as necessary.
- Supervise City Attorney staff on a daily basis, approve leave time and otherwise manage the personnel matters of the City Attorney's Office.

Assistant City Attorney Task/Duty List

- Assist the City Attorney in the planning, organizing and direction of activities of the City Attorney's Office.
- As assigned, attend meetings of the City Council and provide such legal advice and assistance as may be required to the City Council.
- Attend all Planning Commission meetings and advise the Planning Division and Planning Commission on use permits, site development permits, rezoning, general and specific plan compliance, impact fees, regulatory takings, conditions of approval, development agreements and other development permits, processes and issues.
- Review staff reports to the City Council, Planning Commission and other boards and commissions for legal compliance with the Brown Act, CEQA, constitutional requirements, and applicable State and federal laws.
- Review and draft resolutions and ordinances for consideration by the Planning Commission and City Council.
- Attend day-to-day internal meetings with City staff from Finance, Police, Fire, Human Resources, Planning, Building, Public Works, Information Services, and Recreation Services to discuss the best legal approach for contracts, resolutions, ordinances, and general City operations.
- Respond to day-to-day legal questions from City staff from Finance, Police, Fire, Human Resources, Planning, Building, Public Works, Information Services, and Recreation Services.
- Assist City staff and the public in the interpretation of Municipal Code provisions, State and federal laws.
- Conduct legal research, prepares cases and represents the City in judicial and administrative proceedings.
- Provide assistance in and/or handles civil litigation, prepares pleadings, including complaints, answers, demurrers, motions to strike, and motions for summary judgment. Conduct discovery, including written discovery, takes and defends depositions, issues subpoenas, and retains experts. Attend and argue at hearings.
- Advise City Council, members of City commissions, boards and committees and City staff on the legal impact or consequences of proposed actions, programs, policies, regulations and activities.
- Perform legal work pertaining to property acquisition, property disposal, public improvements, and matters relating to public utilities.
- Prepare, reviews, and examine complex contracts, agreements, briefs, bid protests, change orders, delay claims, ordinances and other legal documents for City departments; represent the City's interest in contract negotiations and carry out goals of such contracts.
- Prepare and present verbal and written reports on work activities.
- Alternate Board Member of ABAG and reviews and provides advice on claims filed against City including sewer back-up claims, City vehicle accidents, street tree intrusion, damages to City and private buildings and facilities, personal injury and similar tort and property related damages claims.
- Monitor, assist in, and/or coordinate the work of outside counsel handling tort and other claims against the City.
- Provide specific advice to all departments on requests for public records and ensuring compliance with subpoenas and City's Open Government Ordinance.

- Assist Human Resources in conducting work place investigations and prepare reports on work place complaints/investigations.
- Provide guidance and/or supervision to volunteer attorneys, legal interns, and support staff.
- Establish positive working relationships with representatives of community organizations, State/local agencies and associations, City management and staff, and the public.
- Respond to citizen inquiries regarding all types of legal issues, including those concerning City business.
- Attend and participate in professional group meetings; stays abreast of new trends and innovations in the field of law.

Executive Secretary/Paralegal Task/Duty List

- Serve as Budget Liaison, develop draft departmental budget; monitor and track departmental budget expenditures and purchase orders.
- Prepare, monitor, track and administer outside counsel contracts.
- Coordinate agenda preparation for the department, including tracking, and monitoring agenda items; edit and correct all department staff reports and agenda items, documents, provide titles for closed session items pursuant to law; prepare certain staff reports and agenda documents.
- Review, proofread and edit all resolutions and ordinances for City Council agendas.
- Prepare reports for annual Finance litigation audits and litigation status reports.
- Investigate and research background facts re: EEOC/ DFEH claims, collects relevant documents from departments and prepare draft responses.
- Research and prepare draft responses to personnel grievances.
- Research weapons confiscations case facts and prepare draft weapons petition pleadings.
- Research Pitchess motions case facts and prepares draft responsive pleadings for final attorney additions and edits.
- Research and update Subpoena Procedures guide as needed.
- Researched background of City Council Handbook, compiled data and records re: same, and track changes to be made in future Handbook update.
- Serve as liaison with Fire and Police for legal assistance requests to ensure prompt responses, and with other internal departments, external organizations and individuals in general.
- Provide administrative support to the attorneys, including calendaring and tracking of legal deadlines, court appearances, meetings, and task deadlines; composing correspondence and legal pleadings; filing of all legal documents with various courts; screening mail and phone calls; scheduling appointments; ensuring that proper department records are maintained; providing oral and written responses to inquiries; making referrals to other appropriate sources of information; using tact and judgment; and applying knowledge of diverse legal procedures.
- Research legal information, cases, procedures and local and State court rules; analyze and present information and make recommendations.
- Coordinate gathering of information from various departments and other sources in the preparation of contracts and other legal documents; reviews contracts from other departments to ensure necessary provisions and documentation are included.
- Assist in drafting resolutions, ordinances, contracts, deeds, settlement agreements, and other legal documents and instruments; proofread and edit for grammar, accuracy, proper legal format, terminology, and procedures.
- Indexed, processed and maintains over 300 boxes of legal files; maintains database of electronic files.
- Analyze needs for and develop procedural forms and processes to improve departmental operation and coordination with other departments on various matters, including weapons confiscations, claims against the City, incidents on City property, liability release waiver issues, and subpoena handling.
- Serve as initial contact person for inquiries and complaints, Public Records Act requests and subpoenas; coordinate with departments to gather and organize records for PRA responses and subpoena responses.

- Serve as department representative member of Risk Management and Safety Committee, provide input on risk management and safety issues, and report back to the City Attorney staff.
- Interview, select, train and supervise multiple Paralegal and Administrative Interns and temporary administrative employees.
- Attend public meetings and perform related duties, including recording secretary duties, and follow-up responsibilities as required.

MEMORANDUM

Office of the City Manager

To: Councilmember Debbie Indihar Giordano

Councilmember Marsha Grilli

From: Tom Williams, City Manager

Subject: **City Attorney Subcommittee Requested Information**

Date: May 28, 2015

In response to Councilmember Indihar Giordano's email of May 20, 2015, the information requested is as follows:

1) How many times have we gone outside for legal services, to defend City on legal cases...I have the $$ cost per year, since 2007- present, but it does not portray the extent to which we have relied on outside counsel...I am looking for lack of expertise in legal areas by our "in house" counsel?

   The City relies on outside legal counsel extensively. Over the past eight years, there are only three occasions where in-house legal counsel was used exclusively. These include, a Rob Means sign case, VTA street closure case, and the recent Citation development fee case. Reliance on outside legal counsel is indicative of the high cost per in-house attorney as reflected in the Attachment A.

   Attachment B shows the legal service costs expensed by the City per year since FY 2008.

2) Need to review what other cities/ particularly our size spend on their legal budget....2000-2016, note which cities have outside legal counsel, and which rely on "in house" counsel....if they have "in house" counsel, I would like to see of their total budget, the % of the budget that is for "in house" services, and % of that budget for outside legal services...revise our chart/table for historical city attorney dept funding, to reflect that percentage also in the graph.

   This information is provided in Attachment A. As reflected in the table, the current budget for the City Attorney office appears to be average when compared to cities of similar size as does the percentage allocation of total budget. However, the budget for each City that contracts out legal services exclusively is less than the City of Milpitas or any other city providing in-house legal department. For example, Campbell, Gilroy, South San Francisco, Dublin, San Leandro and Union City all contract out legal services exclusively. Each of these cities have a legal budget significantly less than the City of Milpitas as Attachment A indicates.

3) Do we have standard/policy in place that would determine if outside legal services are required or needed?

There is no such policy. However, the decision to reorganize legal into an in-house department in Fiscal Year 07-08 was made with the clear objective that the City would not need to contract out any legal services. Significant budget savings were projected as a result. Unfortunately, this objective has not been realized as the City now contracts out most of its legal work to third party consultants. An increase in legal expenses has been realized each year and the cost per employee is significantly more than most cities especially those that exclusively contract out legal services (see Attachment A).

4) Of those cities surveyed, what does their "in house" legal department, look like? # of employees? function?

Data collected from all cities surveyed who provide in-house legal counsel that the only services they contract out are litigation services. The size of the legal team varies from city to city. For example, Palo Alto has a staff of 11 while the City of Cupertino has 3 staff. The complexities of each City and the array of services provided is an indicator of the size of the legal team. Cities with more in house attorneys hire personnel with a expertise in specific disciplines such as land use, personnel, finance and tax etc...Most medium to smaller populated cities that have complex issues, provide a full array of services such as land use, utilities and public safety tend to contract out legal services rather than have a small limited in house legal team. Contracting out to a firm specializing in public sector legal services provide a wide range of highly qualified legal specialists. These attorneys are brought in on a case by case basis only when the need arises. As such, these cities are not paying for services they do not need or for a specialty or generalist lawyer that does not fit their needs in a cost effective or efficient way.

Attachment A

Cost Comparison with other Cities of similar Size

City	Population	Total Operating & CIP Budget	Total City Attorney Budget	# of Staff	Cost Per Staff	In-House / Contract Out	% CAO Budget to Total City Budget
Santa County County Cities with Population Between 40,000 to 87,000							
Campbell	41,993	$ 60,527,838	$ 353,179		n/a	Contract	0.58%
Cupertino	59,946	$ 119,476,120	$ 1,447,280	3	$ 482,427	In-house	1.21%
Gilroy	52,413	$ 122,412,270	$ 535,000		n/a	Contract	0.44%
Mountain View	75,787	$ 256,030,551	$ 1,662,001	8	$ 207,750	In-house	0.65%
Palo Alto	63,000	$ 470,341,367	$ 2,450,229	11	$ 222,748	In-house	0.52%
Milpitas	70,000	$ 136,928,456	$ 969,654	3	$ 323,218	In-house	0.71%
Santa Mateo County Cities with Population Between 40,000 to 87,000							
Redwood City	80,768	$ 184,683,470	$ 1,349,121	4.5	$ 299,805	In-house	0.73%
South San Francisco	65,710	$ 111,153,045	$ 764,998		n/a	Contract	0.69%
Alameda County Cities with Population Between 40,000 to 87,000							
Alameda	75,988	$ 164,000,000	$ 1,017,000	4	$ 254,250	In-house	0.62%
Dublin	53,462	$ 102,673,164	$ 807,360		n/a	Contract	0.79%
Pleasanton	73,067	$ 166,913,483	$ 1,486,883	4	$ 371,721	In-house	0.89%
San Leandro	87,691	$ 131,398,777	$ 688,676		n/a	Contract	0.52%
Union City	72,155	$ 101,935,185	$ 450,000		n/a	Contract	0.44%
		Average City Budget	Average City Attorney Budget				
Cities with in-house attorney servcies		**$ 214,053,350**	**$ 1,483,167**		**$ 308,845**		0.69%
Cities with contracted attorney Servcies		**$ 105,016,713**	**$ 599,869**		n/a		0.57%

Note:
Information obtained from each respective city's FY 14-15 Adopted Budget

Attachment B

Outside Attorney Service Costs

	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY 2015 Year-to-date	Total
Patricia Elliot	11,539						8,813	125	20,477
Roy C. Abrams	56,745	1,485							58,230
Hopkins & Carley	28,513	20,713	29,660	113	3,000	64,811	240,501		387,311
Murphy & Associates PC		10,841	40,439	21,256	84,225				156,760
Renne Sloan Holtzman Sakai			13,689	13,575	49,502	35,835	89,406	7,370	209,377
Davidovitz & Bennett LLP				2,232					2,232
Meyers, Nave, Riback, Silver	248,737	2,423			68				251,228
Jarvis Fay Doporto & Gibson			5,458	2,125	11,963	68,972	111,179	54,078	253,775
Goldfarb & Lipman LLP					18,338	78,595	70,046	5,533	172,512
Kronick, Moskovitz, Tiedemann		12,000	7,105			175	11,947		31,227
Burke, Williams & Sorensen LLP					49,802	47,351	64,136	76,908	238,197
Kelli Pon							2,036		2,036
The Smith Firm								19,809	19,809
The Sutton Firm					34,097				34,097
Stubbs & Leone							19,055		19,055
City of Morgan Hill					3,549	11,426	963		15,938
Legal defense costs through ABAG	164,202	175,035	57,492	33,046	24,018	61,902	145,215	53,078	713,988
	509,736	222,497	153,842	72,346	278,561	369,067	763,298	216,901	2,586,248

MEMORANDUM

Office of the City Attorney

Date: May 29, 2015

To: City Attorney Subcommittee;

Mayor Esteves and Members of the City Council

From: Michael Ogaz, City Attorney

Subject: City Attorney's Office 2015-2016 Budget

At the City Council meeting on May 19, 2015, there were questions raised about the proposed hiring of a Deputy City Attorney and the increased City Attorney's Office budget over time from Fiscal Year 2000-2001 to Fiscal Year 2015-2016. The purpose of this memorandum is to provide additional information and clarification to the City Attorney Subcommittee and City Council on the City Attorney's Office budget.

The City Attorney's Office expenditure in Fiscal Year 2000-2001 was $675,154 for part-time outside legal services. The City Attorney's Office budget for Fiscal Year 2015-2016 is $1,019,040 for full-time, in-house legal services. Councilmember Giordano raised concerns about the increased budget over the fifteen (15) year period.

First, according to the United States Department of Labor, Bureau of Labor Statistics, the total annual inflation for the Bay Area from 2000 to 2015 is **41.5%**. The City Attorney's Office budget has increased during the same time period, along with all City departments, consistent with annual inflation increases in the Bay Area. Attachment A to this memorandum is a copy of the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for San Francisco-Oakland-San Jose.

Second, according to the United States Census Bureau, the population of the City of Milpitas in 2000 was 62,846 and is now approximately 70,817. The City has grown significantly during the past fifteen (15) years with more demands on City resources and services (including legal services for resolutions, ordinances, contracts, dispute resolution, attendance and advice to various boards and commissions, and litigation, among others).

Third, in briefly reviewing other City department budgets from Fiscal Year 2000-2001 to Fiscal Year 2015-2016, their budgets have also similarly increased over the same time period.

Departments	Fiscal Year 2000-2001	Fiscal Year 2015-2016
Finance	$2,362,499	$3,564,287
Building	$2,257,362	$3,548,011
Planning	$1,913,943	$3,391,879
City Manager	$517,542	$1,268,324

Fourth, other similar sized cities in Santa Clara County, such as Mountain View and Palo Alto, have City Attorney's Office budgets of $1,662,001 (FY 14-15) and $2,450,229 respectively. The City of Mountain View has a population of approximately 77,846, with a City Attorney's Office budget of $1,662,001 and eight (8) full-time employees including four (4) attorneys. The City of Palo Alto has a population of approximately 66,642, with a City Attorney's Office budget of $2,450,229 and twelve (12) full-time positions, including eight (8) attorneys. In contrast, Milpitas has a population of approximately 70,817 with a budget of $1,019,040 and three (3) positions, including only two (2) attorneys. Attachment B is a copy of a review of comparable cities.

Fifth, the City Attorney's Office has saved the City of Milpitas a significant amount of money by initiating programs that recruit and utilize the talents of volunteer attorneys, law students and paralegal student interns. The Office has had numerous volunteer attorneys and law student interns since 2009. Similarly, paralegal student interns have volunteered since early 2011. Attorneys and law student interns have volunteered over 5,000 hours to the City since 2009, and paralegal and student interns have volunteered over 1700 hours since 2011. Recruiting and engaging these volunteers has saved the City as much as $200,000. Attachment C is a copy of the volunteer hours.

Lastly, the numbers do not truly reflect the value that the City Attorney's Office adds to the City of Milpitas. Having a well-funded City Attorney's Office with full-time employees, similar to Mountain View and Palo Alto, is in the best of interest of this growing community. We are here on a full-time basis to protect the City's interest by attending meetings, promptly answering legal questions, reviewing and drafting ordinances, resolutions, and contracts and, more importantly, to be fully accessible to the public and City staff. We are a part of the City team to keep the City moving in a positive direction. Unlike private law firms, our Office is not concerned about billable hours, but rather how much time is needed to do the job right because our attorneys do not work or get paid by the hour.

In conclusion, the addition of the Deputy City Attorney position will enhance the department's ability to achieve its goal of increasing efficiency and providing better service to the community. The City Attorney's Office, like all other City departments, is extremely cognizant of its budget and has done all it can to best protect the City's interest in the most cost-effective manner.

U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS
Western Information Office, 90 7th St., Suite 14-100, San Francisco, CA 94103
Information Staff (415) 625-2270 / Fax (415) 625-2351

SAN FRANCISCO-OAKLAND-SAN JOSE

05/20/15 Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)

YEAR	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SEMIANNUAL 1ST HALF	SEMIANNUAL 2ND HALF	ANNUAL AVERAGE
1996	152.9	153.2	152.9	153.9	155.1	155.2	155.9	155.6	156.3	156.9	156.9	156.0	153.9	156.3	155.1
1997	157.0	157.9	159.2	159.6	159.8	160.0	160.6	161.2	161.6	162.5	162.6	162.6	158.9	161.9	160.4
1998		163.2		164.6		165.5		166.6		167.2		167.4	164.2	166.9	165.5
1999		169.4		172.2		171.8		173.5		175.2		174.5	170.8	174.2	172.5
2000		176.5		178.7		179.1		181.7		183.4		184.1	177.7	182.6	180.2
2001		187.9		189.1		190.9		191.0		191.7		190.6	188.7	191.1	189.9
2002		191.3		193.0		193.2		193.5		194.3		193.2	192.3	193.7	193.0
2003		197.7		197.3		196.3		196.3		196.3		195.3	196.8	196.1	196.4
2004		198.1		198.3		199.0		198.7		200.3		199.5	198.2	199.5	198.8
2005		201.2		202.5		201.2		203.0		205.9		203.4	201.5	203.9	202.7
2006		207.1		208.9		209.1		210.7		211.0		210.4	207.9	210.6	209.2
2007		213.7		215.8		216.1		216.2		217.9		218.5	214.7	217.4	216.0
2008		219.612		222.074		225.181		225.411		225.824		218.528	221.730	223.804	222.767
2009		222.166		223.854		225.692		225.801		226.051		224.239	223.305	225.484	224.395
2010		226.145		227.697		228.110		227.954		228.107		227.658	226.994	227.944	227.469
2011		229.981		234.121		233.646		234.608		235.331		234.327	232.082	234.698	233.390
2012		236.880		238.985		239.806		241.170		242.834		239.533	238.099	241.201	239.650
2013		242.677		244.675		245.935		246.072		246.617		245.711	243.894	246.152	245.023
2014		248.615		251.495		253.317		253.354		254.503		252.273	250.507	253.463	251.985
2015		254.910		257.622											

Table of over-the-year percent increases. An entry for Feb. 2006 indicates the percentage increase from Feb. 2005 to Feb. 2006.

1997	2.7	3.1	4.1	3.7	3.0	3.1	3.0	3.6	3.4	3.6	3.6	4.2	3.2	3.6	3.4
1998		3.4		3.1		3.4		3.3		2.9		3.0	3.3	3.1	3.2
1999		3.8		4.6		3.8		4.1		4.8		4.2	4.0	4.4	4.2
2000		4.2		3.8		4.2		4.7		4.7		5.5	4.0	4.8	4.5
2001		6.5		5.8		6.6		5.1		4.5		3.5	6.2	4.7	5.4
2002		1.8		2.1		1.2		1.3		1.4		1.4	1.9	1.4	1.6
2003		3.3		2.2		1.6		1.4		1.0		1.1	2.3	1.2	1.8
2004		0.2		0.5		1.4		1.2		2.0		2.2	0.7	1.7	1.2
2005		1.6		2.1		1.1		2.2		2.8		2.0	1.7	2.2	2.0
2006		2.9		3.2		3.9		3.8		2.5		3.4	3.2	3.3	3.2
2007		3.2		3.3		3.4		2.6		3.3		3.8	3.3	3.2	3.3
2008		2.8		2.9		4.2		4.2		3.6		0.0	3.3	3.0	3.1
2009		1.2		0.8		0.2		0.2		0.1		2.6	0.7	0.8	0.7
2010		1.8		1.7		1.1		1.0		0.9		1.5	1.7	1.1	1.4
2011		1.7		2.8		2.4		2.9		3.2		2.9	2.2	3.0	2.6
2012		3.0		2.1		2.6		2.8		3.2		2.2	2.6	2.8	2.7
2013		2.4		2.4		2.6		2.0		1.6		2.6	2.4	2.1	2.2
2014		2.4		2.8		3.0		3.0		3.2		2.7	2.7	3.0	2.8
2015		2.5		2.4											

City Attorney Office

REVIEW OF COMPARABLE CITIES

City	Population	Positions	Budget
MOUNTAIN VIEW	77,846	8 (4 attys)	$1,662,001 (FY15)
PALO ALTO	66,642	12 (8 attys)	$2,450,229 (FY16)
MILPITAS	69,783	3 (2 attys)	$1,019,040 (FY16)

LEGAL INTERN VOLUNTEER HOURS

YEAR	NAME	TYPE	HOURS
2009-2010	Asa Pittman	Law Student/Volunteer Attorney	592
2011	Micah Miller	Law Student	270
2012	Nasir Mohammed	Volunteer Attorney	516
2013	Josephine Park	Volunteer Attorney	24
	Kelli Pon	Volunteer Attorney	700
	Adam Brutocao	Law Student	70
	Eugenia Buzogly	Law Student	30
2014	Claire Lai	Volunteer Attorney	1084
	Amandeep Chatha	Volunteer Attorney	27
	Brice Hamack	Volunteer Attorney	6.5
	Coleman Peng	Volunteer Attorney	32
	Phong Banh	Volunteer Attorney	339
	Joni Puzon	Law Student	378
	Sanna Asabi	Law Student	205
	Chris Bianchi	Law Student	176
	Analiese Danner	Law Student	91.5
	Kevin Armanio	Law Student	279.5
2015	Claire Lai	Volunteer Attorney	500
	Chris Bianchi	Law Student	149
TOTAL VOLUNTEER ATTORNEY HOURS:			**3320.5**
If hired at City's current lowest rate for Deputy City Attorney of $49.29/hr:			$163,534.62*
TOTAL LAW STUDENT HOURS:			**2149**
If hired at City's current highest rate for paid student interns of $17.68/hr:			$37,994.32*

YEAR	NAME	TYPE	HOURS
2011	Delrae Johnson	Paralegal Student	110
	John Chow	University Student	110
	Linda Santellano	Paralegal Student	220
2012	Jenny Lee	Paralegal Student	110
	Lan Sheng	Paralegal Student	110
	Mayra Perez	Paralegal Student	110
2013	Felianne Mendoza	Paralegal Student	220
	Eugenia Yee	University Student	200
	Adi Raikadroka	Paralegal Student	110
2014	Jessica Pulido	Paralegal Student	110
	Kasie Harmon	Paralegal Student	110
	Royall Walters	Paralegal Student	110
2015	Royall Walters	Paralegal Student	32
	Joan McFarland	Paralegal Student	110
TOTAL HOURS:			**1772**
If hired at City's current lowest rate for paid student interns of $9.18/hour:			$16,266.96*
If hired at City's current lowest rate for Office Assistant I: $21.85/hour:			$38,718.20*

*These figures do not include other personnel related costs, such as PERS, health insurance, workers compensation insurance, etc.

MEMORANDUM 5

Department of Human Resources

To: Honorable Mayor and City Council

Through: Thomas C. Williams, City Manager

From: Carmen Valdez, Human Resources Director

Subject: **Analysis and Comparison of an Internal Attorney Group versus Contract City Attorney Services**

Date: March 27, 2007

Please see attached reports for the analysis of internal City Attorney versus contract services.

1. Memo from City Attorney dated December 2, 2005
2. Analysis for full year salary and benefits for internal attorney staff
3. City's record summary of hours and costs for FY 03-04, 04-05, 05-06 and 06-07
4. Memo from City Attorney dated March 21, 2007

Thank you.

MEMORANDUM

Department of the City Attorney

To: City Council Finance Subcommittee

From: Emma Karlen, Director of Finance
Steven T. Mattas, City Attorney
Richard D. Pio Roda, Assistant City Attorney

Subject: Request for Information: City Attorney's Office Staffing Requirements

Date: December 2, 2005

This memo concerns information requested by the City Council Finance Subcommittee regarding the estimated in-house costs, including salary and all benefits, for staffing a City Attorney's Office composed of (1) a City Attorney, an Assistant City Attorney (minimum of 6 years experience), a Paralegal and a Secretary, and (2) a City Attorney, an Assistant City Attorney (minimum of 6 years experience), a Deputy City Attorney (minimum of 4 years experience) and a Secretary.

When the City previously had in-house counsel, there were three attorneys and one secretary. The City Attorney believes the City could operate with one City Attorney, one senior assistant city attorney, one experienced paralegal and one secretary. This staffing level would not include any coverage of any substantive litigation or arbitration other than general management of the litigation. Thus, those costs would be in addition to the costs listed below.

Our office conducted a survey of the salaries for each position mentioned above from local cities of comparable size. The cities surveyed included those listed below. All benefits were then calculated and loaded at current Milpitas rates, expressed as a percentage, for "Miscellaneous employee - management." The overhead rate included in the cost estimates below is 28 percent, which the Finance Director believes is a conservative estimate.

The Assistant City Attorney salaries were calculated based upon 6 years experience, which was approximately the average, and the Secretary's rates were calculated based upon an Executive Assistant classification. The Subcommittee should be aware that the averages shown below are a conservative estimate of costs. Milpitas does not normally compensate its employees at the average of comparison cities. Instead, Milpitas employees have, in recent history, tended to be paid near or at the top of comparison cities.

MEMORANDUM

Department of the City Attorney

To: City Council Finance Subcommittee

From: Emma Karlen, Director of Finance
Steven T. Mattas, City Attorney
Richard D. Pio Roda, Assistant City Attorney

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MEMORANDUM 5

Department of Human Resources

To: Honorable Mayor and City Council

Through: Thomas C. Williams, City Manager

From: Carmen Valdez, Human Resources Director

Subject: **Analysis and Comparison of an Internal Attorney Group versus Contract City Attorney Services**

Date: March 27, 2007

Please see attached reports for the analysis of internal City Attorney versus contract services.

1. Memo from City Attorney dated December 2, 2005
2. Analysis for full year salary and benefits for internal attorney staff
3. City's record summary of hours and costs for FY 03-04, 04-05, 05-06 and 06-07
4. Memo from City Attorney dated March 21, 2007

Thank you.

Example Number 1: City Attorney, Senior Assistant City Attorney, Paralegal and Executive Assistant.

City	City Attorney	Assistant City Attorney	Paralegal	Secretary
Cupertino	$179,640	$97,776		$70,176
Palo Alto	$186,160	$142,771	$68,578	$86,133
Mountain View	$183,725	$120,373		$64,927
Redwood City	$162,228	$96,576	$57,761	$51,864
San Mateo	$159,390	$122,886		$60,008
Santa Clara	$174,960	$148,860		$82,512
Sunnyvale	$178,000	$141,259	$78,170	$70,264
Fremont	$215,941	$168,477	$71,999	$72,342

Based on the above, the average City Attorney's salary would be $180,005, the average Assistant City Attorney's salary would be $129,872, the average Paralegal's salary would be $69,127, and the average Secretary/Executive Assistant would be $69,778, for a total salary calculation of $448,782. The Director of Finance estimates that the total overhead for these positions expressed as a percentage would be 28%. Thus, the total costs -- salary and benefits included -- would be $574,441 per year. This does not include normal additional costs such as training and seminars.

Example No. 2: City Attorney, Senior Assistant City Attorney, Deputy City Attorney and Executive Assistant

The amounts would be different if the paralegal position were substituted for a Deputy City Attorney with a minimum of 4 years experience. The average salary for a Deputy City Attorney with a minimum of 4 years experience is $118,615, which would increase the total salary numbers for this type of City Attorney's Office to $498,270. Total costs including the 28% overhead factor would be $637,786 per year. This does not include normal additional costs such as training and seminars.

City	City Attorney	Asst. City Atty.	Dep. City Atty.	Secretary
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Fremont	$215,941	$168,477	$141,120	$72,342

In comparison, the amount allocated for general city attorney services for the prior three fiscal years was $596,000, 2005-2006, $563,000, 2004-2005, and $553,550 2003-2004. This amount does not include litigation costs, labor negotiation costs and labor arbitration costs incurred during those years. While a small percentage of that work may have been able to be done by in-house counsel, the majority probably could not have been done with in-house counsel.

Please contact our office if you have any further questions.

RDP
CC: Charles Lawson, Interim City Manager
Emma Karlen, Director of Finance

794232v1; 500-001

City	City Attorney	Asst. City Atty.	Dep. City Atty.	Secretary
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Full Year
In-House City Attorney
Effective Date: January 2007

(12 months)

			Hourly
4111	Full Salary- Position	184,299	88.61
4131	PERS	27,018	
4131	PERS	26	
4132	Group Insurance	12,610	
4133	Medicare	2,672	
4135	Workers' Comp	921	
4138	Deferred Comp	900	
	Salary & Benefit Total	228,446	

Assistant Attorney
Effective Date: January 2007
(12 months)

4111	Full Salary- Position	137,256	65.99
4131	PERS	20,122	
4131	PERS	26	
4132	Group Insurance	12,610	
4133	Medicare	1,990	
4135	Workers' Comp	686	
4138	Deferred Comp	900	
	Salary & Benefit Total	173,590	

Assistant Attorney
Effective Date: January 2007
(12 months)

4111	Full Salary- Position	137,256	65.99
4131	PERS	20,122	
4131	PERS	26	
4132	Group Insurance	12,610	
4133	Medicare	1,990	
4135	Workers' Comp	686	
4138	Deferred Comp	900	
	Salary & Benefit Total	173,590	

Secretary
Effective Date: January 2007
(12 months)

4111	Full Salary- Position	84,192	40.48
4131	PERS	12,343	
4131	PERS	26	
4132	Group Insurance	12,610	
4133	Medicare	1,221	
4135	Workers' Comp	421	
4138	Deferred Comp	900	
	Salary & Benefit Total	111,712	

	Total	**687,338**	65.26 Hourly Average

Budget/Positions – Rates include benefits

Legal Services	FY 03-04			FY 04-05			FY 05-06		
	Average Rate	Hours	Expense	Average Rate	Hours	Expense	Average Rate	Hours	Expense
General City Attorney Services (includes contract review, legal opinion, ordinance compliance issues and employment contracts.)	$ 158	2,652	$ 419,085	$ 158	3,567	$ 563,569	$ 165	2,924	$ 482,524
Developers agreements				$ 195	210	$ 40,854	$ 207	286	$ 59,104
Labor Negotiation/Arbitration/Grievance Services (includes MOU negotiation with the unions - MPOA, IAFF, MSA, MEA, ProTech, LIUNA-MMC and personnel grievances)	$ 201	364	$ 73,147	$ 201	606	$ 121,905	$ 214	126	$ 26,945
Legal Services - Public Works construction claims (includes Turner, RRM Design & Aztec, Albert V Witt Jr and Pacific Bell.)	$ 201	2,595	$ 521,670	$ 201	3,943	$ 792,587	$ 210	3,760	$ 789,677
Total		5,612	$1,013,903		8,326	$1,518,915		7,096	$1,358,250

Legal Services	FY 03-04			FY 04-05			FY 05-06		
	Average Rate	Hours	Expense	Average Rate	Hours	Expense	Average Rate	Hours	Expense
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Total		5,612	$1,013,903		8,326	$1,518,915		7,096	$1,358,250

Full Year
In-House City Attorney
Effective Date: January 2007

(12 months)

			Hourly
4111	Full Salary- Position	184,299	88.61
4131	PERS	27,018	
4131	PERS	26	
4132	Group Insurance	12,610	
4133	Medicare	2,672	
4135	Workers' Comp	921	
4138	Deferred Comp	900	
	Salary & Benefit Total	228,446	

Assistant Attorney
Effective Date: January 2007
(12 months)

4111	Full Salary- Position	137,256	65.99
4131	PERS	20,122	
4131	PERS	26	
4132	Group Insurance	12,610	
4133	Medicare	1,990	
4135	Workers' Comp	686	
4138	Deferred Comp	900	
	Salary & Benefit Total	173,590	

Assistant Attorney
Effective Date: January 2007
(12 months)

4111	Full Salary- Position	137,256	65.99
4131	PERS	20,122	
4131	PERS	26	
4132	Group Insurance	12,610	
4133	Medicare	1,990	
4135	Workers' Comp	686	
4138	Deferred Comp	900	
	Salary & Benefit Total	173,590	

Secretary
Effective Date: January 2007
(12 months)

4111	Full Salary- Position	84,192	40.48
4131	PERS	12,343	
4131	PERS	26	
4132	Group Insurance	12,610	
4133	Medicare	1,221	
4135	Workers' Comp	421	
4138	Deferred Comp	900	
	Salary & Benefit Total	111,712	

	Total	**687,338**	65.26 Hourly Average

Budget/Positions -- Rates include benefits

Legal Services	FY 06-07			
	Average Rate	Hours	Expense (7 months)	
General City Attorney Services (includes contract review, legal opinion, ordinance compliance issues and employment contracts.)	$ 169	1,702	$ 287,689	*
Developers agreements	$ 211	413	$ 87,200	*
Labor Negotiation/Arbitration/Grievance Services (includes MOU negotiation with the unions - MPOA, IAFF, MSA, MEA, ProTech, LIUNA-MMC and personnel grievances)	$ 214	182	$ 39,012	*
Legal Services - Public Works construction claims (includes Turner, RRM Design & Aztec, Albert V Witt Jr and Pacific Bell.)	$ 214	3,145	$ 672,972	**
Total		5,443	$ 1,086,873	

Note

* Amounts reflect invoices through January 2007

** Amounts reflect invoices through December 2006

MEMORANDUM

Department of the City Attorney

To: Thomas C. Williams, City Manager
Carmen Valdez, Human Resources Director

From: Steven T. Mattas, City Attorney and
Richard D. Pio Roda, Assistant City Attorney

Subject: Transmittal Memo: Comparison of Santa Clara County Cities' Legal Budgets

Date: March 21, 2007

At recent City Council and in prior City Attorney Subcommittee meetings, the City Council and Subcommittee reviewed issues associated with comparing in-house versus contract city attorney services. The Subcommittee did not make a recommendation, but did want to have the City Council consider information gathered to date by our office and City staff. This memo serves to convey additional information that we request be included in the packet to the City Council for consideration at the April 3, 2007 meeting. It will assist the City Council to compare what the City spends for legal services per capita versus the other cities in the County with populations over 30,000[1].

To recap, the City Manager, Directors of Human Resources and Finance in consultation with the Subcommittee, created documents showing cost estimates to staff an in-house City Attorneys office and the City's record summary of hours and costs. The City Attorney's office also submitted a memo addressed originally to the Finance Subcommittee describing in-house v. contract city attorney services and a summary of hours billed between December 2005 and November 2006.

The attached spreadsheet presents a comparison of the other Santa Clara County cities' populations versus those cities' approved legal budgets over the last two years. Our office generated separate columns to present a cost breakdown of legal dollars per capita. Milpitas' numbers are presented in bold below the chart for ease of reference.

Please contact me or Steve if you have any questions.

500.001/950954v1

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[1] Population figures in the chart are from California Department of Finance estimates as of January 1, 2006.

MEMORANDUM

Department of the City Attorney

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Carmen Valdez, Human Resources Director

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Total		5,443	$ 1,086,873	

Note

* Amounts reflect invoices through January 2007

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Legal Budgets of County Cities with Populations over 30,000

City	Population*	2005-2006 Approved Budget	2005-2006 Legal Dollars per capita	2006-2007 Approved Budget	2006-2007 Legal Dollars per capita
Campbell	38,408	$203,951.00	$5.31	$206,151.00	$5.37
Cupertino	53,840	$513,440.00	$9.54	$524,309.00	$9.74
Gilroy	48,527	$520,500.00	$10.73	$510,500.00	$10.52
Morgan Hill	37,091	$844,690.00	$22.77	$667,697.00	$18.00
Mountain View	71,995	$1,233,731.00	$17.14	$1,356,852.00	$18.85
Palo Alto	62,148	$2,143,767.00	$34.49	$1,715,911.00	$27.61
San Jose	953,679	$13,549,857.00	$14.21	$14,735,023.00	$15.45
Santa Clara	110,771	$1,122,955.00	$10.14	$1,067,050.00	$9.63
Saratoga	30,835	$396,800.00	$12.87	$421,400.00	$13.67
Sunnyvale	133,544	$1,356,189.00	$10.16	$2,756,489.00	$20.64
			$14.73		$14.95

* Population figures are from CA Department of Finance estimates as of January 1, 2006

Milpitas	**65,276**	**$771,000**	**$11.81**	**$788,460**	**$12.09**

DRAFT CITY ATTORNEY SUBCOMMITTEE MEETING MINUTES
CITY OF MILPITAS

Minutes of:	City Attorney Subcommittee Meeting
Date:	Friday, October 31, 2008
Time:	12:30 p.m.
Location:	First Floor Committee Room, Milpitas City Hall 455 E. Calaveras Boulevard, Milpitas, California
Submitted by:	City Attorney Michael Ogaz

Roll Call:

1. The meeting was called to order at 12:30 p.m. as scheduled. Present were Committee Members Althea Polanski and Debbie Giordano, and staff member City Attorney Michael Ogaz.

Agenda Approval:

2. Call for approval of the Agenda was made by Chairperson Polanski. A motion to approve the Agenda was made by Committee Member Giordano and concurred by Chairperson Polanski.

Closed Session:

3. The Subcommittee adjourned to closed session to discuss the employee performance evaluation of City Attorney Michael Ogaz. City Manager Tom Williams joined the closed session.

The Subcommittee returned from closed session with no report out, except to have the employee evaluation results summarized and brought back to the full Council in closed session at the second City Council meeting in November.

Public Forum:

4. Chairperson Polanski called the Public Forum agenda item and, noting that there were no members of the public present, moved to the next item.

City Attorney Contract Issues:

5. Chairperson Polanski called item number 5, City Attorney Contract Issues. City Attorney Ogaz indicated that the only contract change he was seeking was to be included in the City Council Appointee group entitled to have the employee PERS portion paid for by the City, now that he has served for one year.

Committee members voted to take the City Attorney's proposal with a favorable recommendation to the Council for approval at the second meeting in November.

Subcommittee Future Dates and Topics:

6. Chairperson Polanski called item number 6, Subcommittee Future Dates and Topics. City Attorney Ogaz asked whether there was a desire to meet on a quarterly or other regular basis. Chairperson Polanski said that meetings should be called on an "as needed" basis as they have been previously. Subcommittee Member Giordano concurred.

Attorney Ogaz asked whether the Subcommittee desired regular litigation updates or the like. The Subcommittee unanimously indicated that this was not necessary and that any such updates should be made to the entire City Council when needed.

Adjournment:

7. Nothing further being discussed, the meeting was adjourned at approximately 1:00 p.m.

Subcommittee Future Dates and Topics:

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Committee members voted to take the City Attorney's proposal with a favorable recommendation to the Council for approval at the second meeting in November.

CITY ATTORNEY SUBCOMMITTEE MEETING MINUTES
CITY OF MILPITAS

Minutes of:	City Attorney Subcommittee Meeting Minutes
Date:	Thursday, April 12, 2007
Time:	5:00 PM
Location:	1st Floor Committee Room Milpitas City Hall 455 E. Calaveras Blvd.

Roll Call:

1. The meeting was called to order at 5:05 p.m. with Councilmember Polanski present. Staff present were Steve Mattas, Tom Williams and Carmen Valdez. Councilmember Giordano arrived at approximately 5:10 p.m.

2. There were no changes to the Agenda

3. There were no public comments during Public Forum

4. Staff handed out a "Draft" City Attorney job announcement. There was discussion on what to include and not include on the announcement. The subcommittee agreed to the recommended changes to the announcement. There was discussion on the salary. The sub committee had agreement on the recommended salary of $184,299. This was the salary that was presented at the City Council Meeting of April 3, 2007.

5. The timeline and the process was also discussed. The anticipated start date of a new City Attorney is September 2007. The approved timeline is:

   First Week of June 4 – Resumes Due
   Week of June 11 – Screening of Resumes
   Week of June 25 – Initial Interviews with Subcommittee and Attorney Panel
   August 8-10 – City Council Final Interviews
   August 21 – Selection Made
   Week of Sept 4 – Desired Start Date

At this time Isaac Hughes, resident requested copies of all notes and handouts from the meeting. Staff will prepare a packet for him. He also went into discussion on a background check on the applicant and how the City will be looking into any kind of reprimands and or discipline that the potential candidate might have been involved in. He made comments on the salary and benefits.

Staff reported that a complete background check will be part of the recruitment process.

The next subcommittee meeting will be to discuss retaining counsel services for specialized items until the replacement of the new City Attorney. A date was not determined at this meeting.

Adjournment: The meeting adjourned at 5:40 pm

Staff reported that a complete background check will be part of the recruitment process.

The next subcommittee meeting will be to discuss retaining counsel services for specialized items until the replacement of the new City Attorney. A date was not determined at this meeting.

Adjournment: The meeting adjourned at 5:40 pm

CITY ATTORNEY SUBCOMMITTEE MEETING MINUTES
CITY OF MILPITAS

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CITY ATTORNEY SUBCOMMITTEE MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**City Attorney Subcommittee Meeting Minutes**
Date:	**Tuesday, December 12, 2006**
Time:	**4:30 PM (4th Floor Conference Room)**
Location:	**4th Floor Conference Room** **Milpitas City Hall** **455 East Calaveras Blvd.**

ROLL CALL

The meeting was called to order at 4:30 p.m. with Councilmembers Polanski and Giordano present. The staff present initially included Steve Mattas. There were no public comments provided

1. With regards to the agenda items the Subcommittee considered agenda items 4, 5, & 6 but did not consider agenda item no. 7.

2. With regards to agenda item no. 4 titled "Consideration of City Manager Contract Terms", the Subcommittee received a report from City Attorney Steve Mattas regarding the draft contract and amendments recommended by Mr. Williams. Specifically those amended terms dealt with the term of the agreement, the severance provision and the possible addition of a provision relating to the City providing a vehicle for City use by Mr. Williams. The Subcommittee provided direction on these issues to the City Attorney and also provided direction regarding a proposed compensation amount payable to Mr. Williams.

3. With regards to item no. 6, items from subcommittee, the City Attorney advised the Subcommittee of an agenda item on the 12/19/06 City Council Agenda requesting additional funds for public works litigation related to the City Hall litigation. The Subcommittee received the information and understood that it was being presented to the City Council for its consideration.

4. With regards to item no. 5, the City Attorney exited the meeting and the City Manager, Director of Finance and Human Resources Director met with the Subcommittee to present their report on the review of in-house versus outside counsel costs comparisons. The Subcommittee has requested additional data from the Finance Director and City Attorney relative to attorney costs and hours.

The next City Attorney Subcommittee meeting will be scheduled within 30 days. The Subcommittee adjourned the meeting at 5:15 pm.

CITY ATTORNEY SUBCOMMITTEE MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**City Attorney Subcommittee Meeting Minutes**
Date:	**Tuesday, May 9, 2006**
Time:	**5:00 PM (City Manager's Conference Room)**
Location:	**City Manager's Conference Room** **Milpitas City Hall** **455 East Calaveras Blvd.**

ROLL CALL

The meeting was called to order at 5:00 p.m. with Councilmember Polanski, Steve Mattas and Charles Lawson present. Councilmember Giordano joined the meeting at 5:03.

1. Steve Mattas provided an update on the status of expenses for fiscal year 2005-2006. Steve indicated that the City Attorney's office would maintain expenditures within the 95% budget target established by the City Council and City Manager. He further indicated that to meet the target the City would have to monitor closely legal expenses for the remainder for the fiscal year. Steve also mentioned that the two litigation matters involving *Milpitas v. San Jose* (CEQA challenge) and *Nelson v. Milpitas* (challenge to the fire inspection fee amount) were funded through the general legal services allocation as opposed to separate litigation funding. Finally, Steve mentioned that the year to date costs for arbitration/grievances/PERB hearings was approximately $18,000 out of a $100,000 budget for the fiscal year.

2. Steve advised the subcommittee of an outstanding invoice for labor negotiation services provided in fiscal year 2004-2005. The specific negotiations involved the LIUNA contract. The original amount for the services was $36,000 on a fixed fee basis. The actual costs incurred were approximately $25,000. Given the delay in submission of the invoice, Steve requested that the subcommittee authorize settlement of the invoice for a total amount of $18,000. The Subcommittee approved the request. There is existing purchase order authority to pay the invoice.

CLOSED SESSION:

3. The subcommittee then entered into closed session to discuss the following items:

   a. Public Employee Appointment and Performance Evaluation;
   b. Conference with Legal Counsel – Existing Litigation (*Preston Pipeline v. City of Milpitas*);
   c. Conference with Legal Counsel – Existing Litigation (*Sowards v. City of Milpitas, Milpitas Police Department, et al.*).

The Subcommittee came out of the closed session at 5:40 pm. The Subcommittee, in concurrence with the recommendation of the City Attorney, requested that the City Attorney's evaluation be scheduled. The Subcommittee also requested that the City Manager distribute an evaluation form related to City Attorney services to all department heads and that a summary of the results be presented to the Subcommittee and then ultimately to the City Council. There were no additional closed session announcements.

CITY ATTORNEY SUBCOMMITTEE MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**City Attorney Subcommittee Meeting Minutes**
Date:	**Tuesday, May 9, 2006**
Time:	**5:00 PM (City Manager's Conference Room)**
Location:	**City Manager's Conference Room** **Milpitas City Hall** **455 East Calaveras Blvd.**

ROLL CALL

The meeting was called to order at 5:00 p.m. with Councilmember Polanski, Steve Mattas and Charles Lawson present. Councilmember Giordano joined the meeting at 5:03.

1. Steve Mattas provided an update on the status of expenses for fiscal year 2005-2006. Steve indicated that the City Attorney's office would maintain expenditures within the 95% budget target established by the City Council and City Manager. He further indicated that to meet the target the City would have to monitor closely legal expenses for the remainder for the fiscal year. Steve also mentioned that the two litigation matters involving *Milpitas v. San Jose* (CEQA challenge) and *Nelson v. Milpitas* (challenge to the fire inspection fee amount) were funded through the general legal services allocation as opposed to separate litigation funding. Finally, Steve mentioned that the year to date costs for arbitration/grievances/PERB hearings was approximately $18,000 out of a $100,000 budget for the fiscal year.

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CITY ATTORNEY SUBCOMMITTEE MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**City Attorney Subcommittee Meeting Minutes**
Date:	**Tuesday, December 12, 2006**
Time:	**4:30 PM (4th Floor Conference Room)**
Location:	**4th Floor Conference Room** **Milpitas City Hall** **455 East Calaveras Blvd.**

ROLL CALL

The meeting was called to order at 4:30 p.m. with Councilmembers Polanski and Giordano present. The staff present initially included Steve Mattas. There were no public comments provided

1. With regards to the agenda items the Subcommittee considered agenda items 4, 5, & 6 but did not consider agenda item no. 7.

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The next City Attorney Subcommittee meeting will be scheduled within 30 days. The Subcommittee adjourned the meeting at 5:15 pm.

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City of Milpitas

Minutes
City Council/City Attorney Subcommittee Meeting
July 22, 2005

The meeting convened at 11:05 a.m. with Steve Mattas, Althea Polanski, and Debbie Giardano present. Charles Lawson joined the meeting at 11:30 a.m.

1. The first item on the agenda involved the City Attorney contract amendment. Mattas summarized prior contract proposal. Giardano expressed satisfaction with the work that the City Attorney's office had done and thought that the suggested increases were merited. However, she also thought that given the City's economic condition it might be appropriate to hold off on the amendment until the next fiscal year. Mattas responded that based on the fact that there had been no amendment to the general services contract for four years, and no amendment for cost recovery for two years, he felt that it was appropriate to proceed with some level of adjustment during this fiscal year. Polanski noted that Mattas and the City Attorney's office had previously come to the City Council and held back on contract adjustments to be able to deal with some of the economic issues that were facing the city. After further discussion, the two City Attorney subcommittee members agreed to a process whereby the rates would be increased 4% as of January 1, 2006, and then 2% additional as of July 1, 2006 and 2% additional as of January 1, 2007.

2. The subcommittee then went into closed session regarding *City of Milpitas v. Centerpoint Associates*. At the conclusion of the closed session there were no announcements made. The meeting adjourned at 11:35 a.m.

Submitted by City Attorney
Steve Mattas
7/28/05

772868; 500.001

6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD

EXCERPT

XVIII. RESOLUTIONS

* **8. Adopt a Resolution Deleting Time-in-Grade Benefit Exception Applicable to City Attorney (Staff Contact: Michael Ogaz, 586-3041)**

Background: Currently the benefit group consisting of the City Council and its directly appointed personnel, i.e., the City Manager and City Attorney, are entitled to have their PERS employee contribution paid by the City. It was determined, however, that the City Attorney should not receive that benefit until he had received his first yearly review, if appropriate. At this time, the City Attorney has had his one year review before the City Council in closed session and the City Attorney Subcommittee has considered in its open session meeting of October 31, 2008, City Attorney compensation issues. With successful completion of his first year as City Attorney, the Subcommittee recommends eliminating the restriction and providing the City Attorney with the PERS benefit allowed to other direct Council appointees.

Fiscal Impact: None. Cost differential will be absorbed within the existing City Attorney Department budget.

The City Attorney Subcommittee makes the following recommendation:

Recommendation: Adopt a Resolution deleting the time-in-grade benefit exception applicable to the City Attorney.

13. Resolution Amending City of Milpitas Classification Plans for the City Attorney's Office

Adopted Resolution No. 7724 amending the City of Milpitas Classification Plan to add four new job classifications with the salary ranges noted below for the City Attorney's Office staff.

Title	Proposed Salary Range:
Assistant City Attorney	$129,993.00 - $158,007.00
Deputy City Attorney	$102,527.00 - $124,622.00
Paralegal	$63,069.00 - $76,661.00
Legal Assistant	$62,604.00 - $76,095.00

The foregoing minutes were approved by the Milpitas City Council as submitted on January 15, 2008.

Mary Lavelle
City Clerk

(2) Motion: to move the appointment of Michael j. Ogaz, under the terms of the contract

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

Mayor Esteves congratulated Mr. Ogaz, upon joining a fine City, and welcomed him to the podium.

Mr. Ogaz came forward to offer brief thanks, with a look forward to working with the City elected officials, citizens and City staff.

The foregoing minutes were approved by the Milpitas City Council as submitted on October 16, 2007.

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Mary Lavelle, City Clerk

EXCERPT

*** 13. Adopt Resolution Amending City of Milpitas Classification Plans for the City Attorney's Office (Staff Contact: Mike Ogaz, 586-3040)**

Background: Periodically, amendments to the Classification Plan are required to account for organizational changes, equity adjustments to salary ranges, and the development of new classifications. The following proposed changes are the result of organizational changes/ additions within the City Attorney's Office. On April 3, 2007, the City Council directed staff to move forward with in-house legal services versus contract services.

The City Attorney commenced in-house legal service on October 15, 2007 and now recommends creation of the following classifications in order to establish a full service City Attorney's Office. The current plan is to hire two persons this fiscal year, and then a third next fiscal year with full staffing to occur before the end of October 2008. While this plan contemplates adding only a total of three positions, four classifications are recommended for addition to allow for flexibility in implementation. The outline of this staffing plan was brought before the City Attorney Subcommittee for discussion in November.

The recommended classifications are:

Title	Proposed Salary Range
Assistant City Attorney	$129,993.00 - $158,007.00
Deputy City Attorney	$102,527.00 - $124,622.00
Paralegal	$63,069.00 - $76,661.00
Legal Assistant	$62,604.00 - $76,095.00

Included in the Council packet are the newly created job specifications and the salary ranges for each for City Council review.

Fiscal Impact: Annual fiscal impact including salaries and benefits is approximately $561,089. Funding necessary for staffing for Fiscal Year 2007-08 is available in the City Attorney's budget.

Recommendation: Adopt a resolution amending the City of Milpitas Classification Plan to add the new classifications with the proposed recommended salary ranges listed for the City Attorney's Office staff.

EXCERPT

*** 13. Adopt Resolution Amending City of Milpitas Classification Plans for the City Attorney's Office (Staff Contact: Mike Ogaz, 586-3040)**

Background: Periodically, amendments to the Classification Plan are required to account for organizational changes, equity adjustments to salary ranges, and the development of new classifications. The following proposed changes are the result of organizational changes/ additions within the City Attorney's Office. On April 3, 2007, the City Council directed staff to move forward with in-house legal services versus contract services.

The City Attorney commenced in-house legal service on October 15, 2007 and now recommends creation of the following classifications in order to establish a full service City Attorney's Office. The current plan is to hire two persons this fiscal year, and then a third next fiscal year with full staffing to occur before the end of October 2008. While this plan contemplates adding only a total of three positions, four classifications are recommended for addition to allow for flexibility in implementation. The outline of this staffing plan was brought before the City Attorney Subcommittee for discussion in November.

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Fiscal Impact: Annual fiscal impact including salaries and benefits is approximately $561,089. Funding necessary for staffing for Fiscal Year 2007-08 is available in the City Attorney's budget.

Recommendation: Adopt a resolution amending the City of Milpitas Classification Plan to add the new classifications with the proposed recommended salary ranges listed for the City Attorney's Office staff.

(2) Motion: to move the appointment of Michael j. Ogaz, under the terms of the contract

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

Mayor Esteves congratulated Mr. Ogaz, upon joining a fine City, and welcomed him to the podium.

Mr. Ogaz came forward to offer brief thanks, with a look forward to working with the City elected officials, citizens and City staff.

The foregoing minutes were approved by the Milpitas City Council as submitted on October 16, 2007.

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Mary Lavelle, City Clerk

MILPITAS CITY COUNCIL MEETING AGENDA
OCTOBER 2, 2007

6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD

EXCERPT

11. Consideration of Appointment of City Attorney (including announcement from Closed Session), and Terms and Contract for City Attorney (Staff Contact: Steve Mattas, 586-3040)

Background: Under the City's Open Government Ordinance, consideration of contract terms related to compensation for the City Manager and City Attorney's contracts must be discussed and decided upon by the City Council in open session. This agenda item relates to the contract for the new in-house City Attorney.

Recommendation: It is recommended that the City Council review and consider the proposed City Attorney's contract terms and direct staff to make changes, if any.

MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Regular Meeting of Milpitas City Council**
Date:	**Tuesday, October 2, 2007**
Time:	**6:00 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

BIDS AND CONTRACTS

11. Contract for City Attorney Appointment

This item was heard early during the meeting (just after Consent Calendar).

Mayor Esteves first announced from the Closed Session, that the City Council on a 5-0 unanimous vote, voted to appoint the City Attorney candidate, subject to the discussion at this point in Open Session.

City Manager Tom Williams stated that the Human Resources Director and the current City Attorney were ready to answer questions from the Council.
Councilmember Polanski spoke on behalf of the City Attorney Subcommittee which met about the contract terms and were unanimous in the offer of contract terms. She asked that staff go over the terms of the contract.

Mr. Mattas explained it was a contract with Michael Ogaz, similar to the current contract arranged for hire of the City Manager. He would start work on October 15, with benefits that the senior management group received and a provision for professional training. Mr. Ogaz was present in the audience, he noted.

Ms. Polanski read aloud from the contract that the annual salary would be $180,000, receive 2.7% at age 55 PERS retirement, a City pool car would be made available for City business, the City Council would review his performance annually, vacation and leave package equivalent to the executive management staff, long term disability insurance provided, and he would serve as an at-will employee reporting to the City Council, with terms for severance if terminated.

Councilmember Giordano reported that the City had spent many months on this. It started with an extensive recruitment handled very well by HR Director Carmen Valdez. Then, a pre-screening and interview process was completed, assisted by the Fire Chief and two City Attorneys, followed by a long interview process of the finalists. She was very happy with the person who was selected and hoped the Council would support the contract and award it to Mr. Ogaz.

Vice Mayor Livengood stated his satisfaction with the process used, and with the choice made for the City. He complemented Carmen Valdez and the City Attorney Subcommittee members for their work in bringing the finalist to the Council.

(1) Motion: to approve the contract for City Attorney, and to adopt Resolution No. 7706 Approving the Agreement for the Employment of City Attorney and General Counsel of the Redevelopment Agency between the City of Milpitas and Michael J. Ogaz

Motion/second: Councilmember Polanski/Councilmember Giordano

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

MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Regular Meeting of Milpitas City Council**
Date:	**Tuesday, October 2, 2007**
Time:	**6:00 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

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Motion/second: Councilmember Polanski/Councilmember Giordano

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

MILPITAS CITY COUNCIL MEETING AGENDA
OCTOBER 2, 2007

6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD

EXCERPT

11. Consideration of Appointment of City Attorney (including announcement from Closed Session), and Terms and Contract for City Attorney (Staff Contact: Steve Mattas, 586-3040)

Background: Under the City's Open Government Ordinance, consideration of contract terms related to compensation for the City Manager and City Attorney's contracts must be discussed and decided upon by the City Council in open session. This agenda item relates to the contract for the new in-house City Attorney.

Recommendation: It is recommended that the City Council review and consider the proposed City Attorney's contract terms and direct staff to make changes, if any.

MILPITAS CITY COUNCIL MEETING AGENDA
MAY 1, 2007

6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD

EXCERPT

*** 11. Update on City Attorney Recruitment (Staff Contact: Carmen Valdez, 586-3086)**

Background: On April 12, 2007 the City Attorney subcommittee met to discuss the recruitment of the City Attorney. Staff presented to the subcommittee a "draft" announcement which included the timeline and the process. The approved timeline is:

- Week of June 4 – Resumes Due
- Week of June 11 – Screening of Resumes
- Week of June 25 – Initial interviews with City Attorney Subcommittee and attorney panel
- August 8-10 – City Council Final Interviews
- August 21 – Selection Made
- Week of September 4 - Desired Start Date

Staff is working on the brochure and will advertise in *Western City* magazine along with various other agencies.

Recommendation: Receive staff report on the recruitment process to date.

MEETING MINUTES (EXCERPT)
CITY OF MILPITAS

Minutes of:	**Regular Meeting of Milpitas City Council**
Date:	**Tuesday, May 1, 2007**
Time:	**6:30 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

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* **11.** City Attorney Recruitment — Received staff report on the recruitment process to date.

The foregoing minutes were approved by the Milpitas City Council as submitted on May 17, 2007.

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Mary Lavelle
City Clerk

MEETING MINUTES (EXCERPT)
CITY OF MILPITAS

Minutes of:	**Regular Meeting of Milpitas City Council**
Date:	**Tuesday, May 1, 2007**
Time:	**6:30 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

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* **11.** City Attorney Recruitment — Received staff report on the recruitment process to date.

The foregoing minutes were approved by the Milpitas City Council as submitted on May 17, 2007.

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Mary Lavelle
City Clerk

MILPITAS CITY COUNCIL MEETING AGENDA
MAY 1, 2007

6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD

EXCERPT

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Staff is working on the brochure and will advertise in *Western City* magazine along with various other agencies.

Recommendation: Receive staff report on the recruitment process to date.

MEETING MINUTES (EXCERPT)
CITY OF MILPITAS

Minutes of:	**Regular Meeting of Milpitas City Council**
Date:	**Tuesday, April 3, 2007**
Time:	**7:00 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

NEW BUSINESS

5. Analysis/Comparison of City Attorney Services

Human Resources Director Carmen Valdez reviewed the staff report to Council. She provided a salary comparison for City Attorneys from eight local cities of comparable size (while 102 cities were surveyed by staff, in total).

Councilmember Giordano reviewed this topic previously in two subcommittee meetings. Last year, the Finance Subcommittee point of view was how the City could save money on costs for legal services. It was not clear that there were cost savings. The key was the average dollar/hour of $200/hour for contract services versus the $65.26 average hourly rate for (in-house) one City Attorney, two Assistant City Attorneys, and one secretary. Ms. Giordano was clear that the City's current contract legal firm of Meyers, Nave received excellent top ratings on its service in past employee evaluations.

Councilmember Polanski commented that upon review, the City Council must look philosophically at the question of the expertise of a contract law firm versus the services of one in-house, less expensive, attorney. Her view was that the City did not have any reason to change at this time.

Mayor Esteves expressed that he had not heard the real reason why this matter was coming forward or what initiated it.

Councilmember Giordano responded to him that the Finance Subcommittee reviewed the costs, and the City Attorney Subcommittee discussed service delivery. The Mayor then asked what was the expected action at the meeting. Councilmember Giordano was asking for guidance and direction from the City Council, as there was a split on the issue at the Subcommittee level.

Councilmember Gomez clarified that this topic was triggered at budget discussion time last year, when the Finance Subcommittee was looking at cost saving measures.

Mayor Esteves believed that an in-house attorney would not be as experienced as a contracted law firm. Without large litigation costs in the past year, the base budget was $413,000 and the actual was compared to the previous year's costs, plus special litigation expenses. The Mayor did not see any economic advantage and felt the level of service was very good from the current City Attorney.

Councilmember Polanski was favorable to the variety of expertise available from a contracted firm, such as Meyers, Nave and did not want to offer any motion to initiate a change in City Attorney services.

The Mayor invited audience members to address the City Council.

<u>Speakers:</u>

Isaac Hughes, Milpitas resident, requested five minutes to speak (not granted by the Mayor), due to the serious nature of the subject, and he had done extensive research. He quoted California Government Code §1090, and referenced documents located on the internet related to conflict of interest of the current City Attorney. He questioned the legality of making contracts by law firm owners, and then requested review of legal advice given to the Council regarding a recent re-zone application considered at a public hearing. Lastly, Mr. Hughes announced he would file a complaint to make null and void the City Attorney's contract.

Motion: to move forward with in-house legal services by July 1, with an internal recruitment by the City's Human Resources department for an attorney, and direct staff to work with the City Attorney Subcommittee on plans for recruitment

Motion/Second: Councilmember Giordano/Vice Mayor Livengood

Vice Mayor Livengood reviewed history that the City had both contracted out and had in-house City Attorneys in the past. When the City contracted out (depending who it was with), the costs could go up a lot beyond the City's control. He felt the City could lose control over the service, and mentioned staff surveys with some dissatisfaction on the level of service, with a concern for a solid level of consistent services. With a generalist, the City would overall save money by going to an in-house attorney, and he supported the latter concept in the best interests of the citizens and City staff.

Councilmember Polanski was concerned about hiring an in-house attorney, using solely an internal recruitment effort. She noted that Council hires or fires only two staff members: the City Manager and the City Attorney. Perhaps, the City Council should have the same process of the use of an outside recruitment firm, such as was done when the City Manager was hired.

Vice Mayor Livengood responded that he had no strong feelings on how recruitment was conducted, either way was fine.

Mayor Esteves put a weight on the quality of services received when contracting out. There was a big risk to hire a generalist City Attorney, and he was concerned about hiring from within the City. He was very uncomfortable with what was proposed.

Ms. Valdez replied another option for the Council was that the City could use an outside firm to screen applications, and then in-house set up interviews of qualified candidates.

Motion carried by a vote of:

AYES: 3
NOES: 1 (Esteves)
ABSTAIN: 1 (Polanski)

Councilmember Polanski stated that she was dismayed by the discussion on the recruitment process, just held. She was more than willing to work with Ms. Valdez in the hiring process for City Attorney or any position.

The foregoing minutes were approved by the Milpitas City Council as submitted on April 17, 2007.

Mary Lavelle
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Mary Lavelle
City Clerk

MEETING MINUTES (EXCERPT)
CITY OF MILPITAS

Minutes of:	**Regular Meeting of Milpitas City Council**
Date:	**Tuesday, April 3, 2007**
Time:	**7:00 PM**
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NEW BUSINESS

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Councilmember Gomez clarified that this topic was triggered at budget discussion time last year, when the Finance Subcommittee was looking at cost saving measures.

Mayor Esteves believed that an in-house attorney would not be as experienced as a contracted law firm. Without large litigation costs in the past year, the base budget was $413,000 and the actual was compared to the previous year's costs, plus special litigation expenses. The Mayor did not see any economic advantage and felt the level of service was very good from the current City Attorney.

Councilmember Polanski was favorable to the variety of expertise available from a contracted firm, such as Meyers, Nave and did not want to offer any motion to initiate a change in City Attorney services.

The Mayor invited audience members to address the City Council.

<u>Speakers:</u>

MILPITAS CITY COUNCIL MEETING AGENDA
APRIL 3, 2007

6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD

EXCERPT

XVII. NEW BUSINESS

5. Analysis and Comparison of an Internal Attorney Group Versus Contract City Attorney Services (Staff Contact: Tom Williams, 586-3050, and Carmen Valdez, 586-3086)

Background: The City Council requested that staff prepare an analysis comparing the costs, including benefits, of in-house City Attorney staff versus contracting for City Attorney services. The City Attorney Subcommittee has met and discussed these alternatives along with their associated costs and benefits on several occasions but has not made a recommendation.

Staff obtained information from other agencies and the law firm Meyers Nave, then created a report comparing the total estimated costs of an internal staff for the City Attorney's office versus contracting out those services. Included in the City Council agenda packet are the reports detailing the results of the analysis along with the report created by Meyers Nave.

The projected cost to staff the City's attorney's office with internal staff is approximately $687,338. This includes:

Classification	Salary & Benefits
1 FTE - City Attorney	$228,446
2 FTE - Assistant City Attorney ($173,590 x 2)	$347,180
1 FTE - Secretary	$111,712
Total	$687,338

The current contract attorney base budget for FY 06-07 is $616,420. The base budget includes expenses for general City Attorney and Redevelopment Agency legal services including contract reviews, legal opinions, ordinance and resolution preparation, and review, development cost recovery, code compliance issues, and general legal assistance to the City Council, Commissions and staff. In addition, the City Attorney's department approved 2006-2007 budget includes $100,000 for labor arbitration and grievance hearings and $70,000 for labor negotiation services, resulting in a total department base budget of $788,460 excluding unexpected litigation costs and construction claims.

The following table provides a summary of the cost incurred through January 2007.

Legal Services	FY 06-07			
	Average Rate	Hours	Expense (7 Months)	
General City Attorney Services	$169	1,702	$287,689	*
(includes contract review, legal opinion, ordinance compliance issues and employment contracts)				

Developers agreements	$211	413	$87,200	*
(cost recoverable by applicant)				
Labor Negotiation/Arbitration/Grievance Services	$214	182	$39,012	*
(includes MOU negotiation with the unions, MPOA, IAFF, MSA, MEA, ProTech, LIUNA, MMC and personnel grievances)				
(Base Budget=$788,460) Subtotal			**$413,901**	
Legal Services – Public Works construction claims	$214	3,145	$672,972	**
(includes Turner, RRM Design & Aztec, Albert V Witt Jr. and Pacific Bell)				
Grand Total		**5,443**	**$1,086,873**	

* Amounts reflect invoices through January 2007

** Amounts reflect invoices through December 2006

The City Attorney Subcommittee is requesting that the City Council consider the information gathered by staff as well as the data prepared by the staff from Meyers Nave and provide additional direction to staff.

Recommendation: Discuss the information provided by City staff and by Meyers Nave; then, provide direction to staff on the matter of City Attorney services.

Developers agreements	$211	413	$87,200	*
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MILPITAS CITY COUNCIL MEETING AGENDA
APRIL 3, 2007

6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD

EXCERPT

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*6

Milpitas Community Advisory Commission
2015 DRAFT WORK PLAN
Annual Recurring Tasks

Task		Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
1.	CDBG public hearing process / workshop for new commissioners	**X**	**X**	**E**	**R**								
2.	Make a Difference Day					**X**		**X**		**X**	**E**	**R**	
3.	Neighborhood Beautification Awards		**X**				**X**	**X**		**R**	**E**	**C**	
4.	National Night Out		**X**				**X**		**E**	**R**			
5.	Annual Work Plan												**X**
6.	CAC Budget/Donations Strategy		**X**			**X**		**X**					
7.	Spring Cleaning Day	**X**	**X**		**X**	**E**							
8.	Town Hall Meeting	**X**			**X**	**X**							**X**

Legend: X= Discussion & Planning; E = Event; C = Ceremony; R = Results Review

<u>Short-term Goals/Projects (prioritized)</u>

1. Tree Planting – Promote tree planting through outreach and tree protection awareness
2. Outreach Program – Continue to perform outreach using Milpitas Cable TV/Magazine to encourage volunteerism and participation in the Milpitas community.
3. Cleanup of Areas – Determine areas in Milpitas and encourage their redevelopment or conduct a program similar to the "Adopt A Highway" program
4. Expand the Neighborhood Watch Program – Work with City staff to expand the Neighborhood Watch Program

CITY OF MILPITAS
EMERGENCY PREPAREDNESS COMMISSION
(EPC) BYLAWS

The Emergency Preparedness Commission (EPC) was established by the Milpitas City Council on April 23, 1988.

Section 1. Purpose

The purpose of EPC is to serve as an advisory body to the City Council on matters pertaining to emergency preparedness and disaster planning.

Section 2. Membership

The Emergency Preparedness Commission is composed of nine (9) members and two (2) alternates appointed by the Mayor and approved by the City Council. The composition is as follows:

Eight at-large representatives who are residents of either the City of Milpitas or residents within the boundaries of the Milpitas Unified School District or represent a business located in Milpitas;
One representative appointed by the Milpitas Board of Education.

NOTE: If available, one representative, who is a Milpitas resident, shall be a Radio Amateur Civil Emergency Service (RACES) representative.

*If available, one business representative should represent a business with 50 or more employees and one business representative should represent a business with less than 50 employees and if available, one representative should represent a Faith Based or Community Based Organization within Milpitas.

Commissioners are also expected to actively participate in at least one (1) Emergency Preparedness Commission event and project in addition to attending regular meetings. When concerning reappoint of commission members, the City Council may review the member's service record on commissions, activities and projects.

Commission members and alternates need not be Milpitas residents, but must represent a business located in Milpitas.

In addition, the City Council may appoint a Council liaison to serve on the Commission in a non-voting capacity.

Section 3. Term of Office and Removal

The term of office for Commission members (including the industry, commercial/retail, and Board of Education representatives) is three (3) years, or until reappointed or a successor is appointed. The term of office for each alternate is two (2) years, or until reappointed or a successor is appointed. Members and alternates are expected to attend all meetings. When any member or alternate has three or more

unexcused absences in a 12-month period, the Commission shall forward this information to the City Council for review and possible removal of the member or alternate from the Commission. Any member or alternate of EPC may be removed from office by majority vote of the City Council at a regularly scheduled Council meeting.

Members may apply for reappointment by submitting a letter of interest or e-mail to the Mayor, with a copy to the Commission Chair, one month prior to the expiration of his/her term of office. Any member of the Commission who wishes to resign should submit a letter of resignation to the Mayor with a copy to the Commission Chair.

Section 4. Vacancies

Vacancies will be filled for the unexpired portion of the term in the same manner as the original appointment.

Section 5. Officers

A Chair and Vice Chair will be selected annually at the first meeting of the calendar year from the appointed members for a term of one year. The Chair will call for meetings and preside over all sessions. In the absence of the Chair, the Vice Chair will preside. In the absence of both the Chair and Vice Chair, the member with the longest continuous service on the Commission will preside.

Section 6. Meetings

The Emergency Preparedness Commission shall hold six regular meetings on the third Thursday nights of January, March, May, July, September and November, at 7:00 p.m. All meetings shall be open to the public. Should a scheduled meeting occur on a holiday, said meeting will be deferred to the same day of the following week or to a date agreed upon by a majority of the Commission. Special meetings of the Commission may be called by a majority of the members, the Chair, or the City Council. Notice of any special meeting shall be given as required by law. Except as otherwise provided by these Bylaws, the Commission will follow the latest edition of Robert's Rules of Order for the orderly conduct of meetings.

Section 7. Quorum

Any five (5) members of the Commission shall constitute a quorum for the transaction of business.

Section 8. Voting

Voting authority is extended to nine (9) regular members. The designee of the School Board representative may vote when seated on behalf of the School Board representative. An alternate member shall vote only if seated in the absence of a regular

member. In the event that a regular member is absent, alternate members shall be seated in order of their alternate position. If a member arrives after an alternate has been seated, the alternate shall remain as the voting member until the end of the meeting.

Section 9. Duties of Commission to be Advisory Only

It is intended that EPC shall be an advisory body to the City Council. Nothing herein contained shall be construed as a limitation on the power of the City Council or the administrative staff of the City in their supervision or authority over property or personnel under their jurisdictions.

Section 10. Assistance of Staff

The City Manager of the City of Milpitas shall provide the Emergency Preparedness Commission with such information and staff assistance as the Commission may from time to time request, subject to limitations imposed by the City Council. The staff member designated by the City Manager shall attend meetings of the Commission and submit such reports as said Commission may request and as deemed necessary or desirable, subject to limitations imposed by the City Council.

Section 11. Amendments

These Bylaws and operating procedures may be amended by simple majority of those voting at any regular EPC meeting, subject to approval by the City Council.

PASSED AND ADOPTED by the Commission, the 15th day of September 2011.

AMENDED AND APPROVED by the Milpitas City Council on the 21st day of February 2006.

PASSED AND ADOPTED by the Milpitas City Council on the 2nd day of June, 2009.

PASSED AND ADOPTED by the Milpitas City Council on the 4th day of October, 2011.

List of Attachments for Item No. 8

– Ballot Measures T & Z

Attachments:

8-A Resolution 7459 and Ordinance No. 264 – Measure T

8-B Resolution 6796 – Measure Z

8-C Measure T & Z Handout

8-D Urban Growth Boundary Map

RESOLUTION NO. 7459

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS TO PLACE BEFORE THE VOTERS OF THE CITY OF MILPITAS AN ORDINANCE REQUIRING THAT, UNTIL DECEMBER 31, 2018, ANY AMENDMENTS TO THE HILLSIDE ORDINANCE OR THE LAND SUBJECT TO THE HILLSIDE ORDINANCE BE APPROVED BY THE VOTERS OF THE CITY OF MILPITAS

WHEREAS, the City Council desires to submit to the voters at the general election on November 2, 2004 an ordinance that would require that, until December 31, 2018, any amendments to the Hillside Ordinance (Ordinance No. 38.672 adopted by the City Council on September 15, 1992) be approved by the voters.

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

Section 1. That the City Council orders submitted to the voters at the General Election on November 2, 2004 the following question:

"Shall an ordinance be adopted that requires that, until December 31, 2018, any amendments to the existing "Hillside Combining District" Ordinance and any amendments to the general plan land use designation for lands currently designated as "Hillside" property be approved by the voters before becoming effective?"	YES
	NO

Section 2. The ordinance to be enacted by the voters pursuant to Section 1 above shall be in the form set forth in Exhibit A, attached hereto.

Section 3. This measure is submitted to the voters pursuant to Elections Code § 9222.

Section 4. The ballots used at the election shall be in the form and content as is required by law.

Section 5. The City Attorney is hereby directed to prepare and submit an impartial analysis.

Section 6: The City Council authorizes Vice Mayor Patricia Dixon and Councilmember Althea Polanski to prepare a written argument in favor of the ballot proposition, on behalf of the City Council, not to exceed 300 words. The City Council also authorizes submission of rebuttal arguments not to exceed 250 words. The City Council authorizes Vice Mayor Patricia Dixon and Councilmember Althea Polanski to prepare and submit a written rebuttal argument in the event a written argument opposing the initiative measure is submitted.

Section 7: The City Clerk is hereby directed to deliver forthwith certified copies of this Resolution to the Clerk of the Board of Supervisors of Santa Clara County and the Registrar of Voters of Santa Clara County promptly upon its adoption.

PASSED AND ADOPTED this 29th day of July 2004, by the following vote:

AYES:	(3)	Mayor Esteves, Vice Mayor Dixon, and Councilmember Polanski.
NOES:	(2)	Councilmembers Gomez, and Livengood.
ABSENT:	(0)	None.
ABSTAIN:	(0)	None.

ATTEST:

Gail Blalock, City Clerk

APPROVED:

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

(for Steven T. Mattas)

Steven T. Mattas, City Attorney

EXHIBIT A

REGULAR

ORDINANCE NO. 264

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS REQUIRING THAT UNTIL DECEMBER 31, 2018 ANY AMENDMENTS OR MODIFICATIONS TO THE HILLSIDE COMBINING DISTRICT ORDINANCE OR THE LAND SUBJECT TO THE HILLSIDE ORDINANCE BE APPROVED BY THE VOTERS OF THE CITY OF MILPITAS

HISTORY: This Ordinance was approved by the voters at the general election in November 2004.

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Gail Blalock, City Clerk

Jose Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITIZENS OF THE CITY OF MILPITAS DO ORDAIN AS FOLLOWS:

WHEREAS, in September of 1992, the City Council after an extensive public input adopted Ordinance No. 38.672, which is generally known as the Hillside Ordinance; and

WHEREAS, the purpose of the Hillside Ordinance is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with development of hillside areas, including, but not limited to, geologic problems, slope, safe access, and visibility; and

WHEREAS, the primary regulations of the Hillside Ordinance are set forth at Section 45 of Chapter 10 of Title XI of the Milpitas Municipal Code, which section is entitled "H" Hillside Combining District"; and

WHEREAS, the Hillside Ordinance also made several conforming changes to other provisions of the Municipal Code; and

WHEREAS, the City's General Plan designates certain property within the hillside area of the City as "Hillside Very Low, Hillside Low, and Hillside Medium"; and

WHEREAS, the City now desires that, until December 31, 2018, amendments and modifications to the Hillside Ordinance and the General Plan land use designations for hillside property be approved by the voters before becoming effective.

THE PEOPLE OF THE CITY OF MILPITAS DO ORDAIN AS FOLLOWS:

Section 1. Amendments and Modifications to the Hillside Ordinance Must Be Approved by the Voters.

Any amendment or modification of the following provisions of the Milpitas Municipal Code shall be approved by the Milpitas voters before taking effect:

1. Subsection XI-1-8.02(b).
2. Section XI-1-15.02.
3. Section XI-10-54.04.
4. Title XI, Chapter 10, Section 45.

Section 2. Modifications to the Hillside Area Boundary Must Be Approved by the Voters.

Lands classified on the City's General Plan Land Use Map as of November 2, 2004 as "Hillside Very Low," "Hillside Low," and "Hillside Medium" shall not be amended to a land use classification other than a land use classification designated "Hillside" unless the amended land use classification is approved by the Milpitas voters.

Section 3. December 31, 2018 Sunset Date.

Sections 1 and 2 of this ordinance shall have no further effect after December 31, 2018.

Section 4. Publication and Effective Date.

This Ordinance shall take effect ten (10) days after its adoption by the voters of Milpitas, and prior to the expiration of 15 days from the passage thereof shall be published at least once in the Milpitas Post, a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.

Section 5. 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.

RES 7459

REGULAR

ORDINANCE NO. 264

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS REQUIRING THAT UNTIL DECEMBER 31, 2018, ANY AMENDMENTS OR MODIFICATIONS TO THE HILLSIDE COMBINING DISTRICT ORDINANCE OR THE LAND SUBJECT TO THE HILLSIDE ORDINANCE BE APPROVED BY THE VOTERS OF THE CITY OF MILPITAS

HISTORY: This Ordinance was approved by the voters at the general election November 2, 2004.

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Gail Blalock, City Clerk

APPROVED:

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITIZENS OF THE CITY OF MILPITAS DO ORDAIN AS FOLLOWS:

WHEREAS, in September of 1992, the City Council after an extensive public input adopted Ordinance No. 38.672, which is generally known as the Hillside Ordinance; and

WHEREAS, the purpose of the Hillside Ordinance is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with development of hillside areas, including, but not limited to, geologic problems, slope, safe access, and visibility; and

WHEREAS, the primary regulations of the Hillside Ordinance are set forth at Section 45 of Chapter 10 of Title XI of the Milpitas Municipal Code, which section is entitled "H" Hillside Combining District"; and

WHEREAS, the Hillside Ordinance also made several conforming changes to other provisions of the Municipal Code; and

WHEREAS, the City's General Plan designates certain property within the hillside area of the City as "Hillside Very Low, Hillside Low, and Hillside Medium"; and

WHEREAS, the City now desires that, until December 31, 2018, amendments and modifications to the Hillside Ordinance and the General Plan land use designations for hillside property be approved by the voters before becoming effective.

THE PEOPLE OF THE CITY OF MILPITAS DO ORDAIN AS FOLLOWS:

Section 1. Amendments and Modifications to the Hillside Ordinance Must Be Approved by the Voters.

Any amendment or modification of the following provisions of the Milpitas Municipal Code shall be approved by the Milpitas voters before taking effect:

1. Subsection XI-1-8.02(b).
2. Section XI-1-15.02.
3. Section XI-10-54.04.
4. Title XI, Chapter 10, Section 45.

Section 2. Modifications to the Hillside Area Boundary Must Be Approved by the Voters.

Lands classified on the City's General Plan Land Use Map as of November 2, 2004 as "Hillside Very Low," "Hillside Low," and "Hillside Medium" shall not be amended to a land use classification other than a land use classification designated "Hillside" unless the amended land use classification is approved by the Milpitas voters.

Section 3. December 31, 2018, Sunset Date.

Sections 1 and 2 of this ordinance shall have no further effect after December 31, 2018.

Section 4. Publication and Effective Date.

This Ordinance shall take effect ten (10) days after its adoption by the voters of Milpitas, and prior to the expiration of 15 days from the passage thereof shall be published at least once in the Milpitas Post, a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.

Section 5. 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.

RESOLUTION NO. 6796

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS TO PLACE BEFORE THE VOTERS OF THE CITY OF MILPITAS AN ORDINANCE APPROVING A GENERAL PLAN AMENDMENT TO ESTABLISH AN URBAN GROWTH BOUNDARY AND TO PROCEED WITH RELATED ACTIONS

WHEREAS, the City Council desires to submit to the voters at the general election on November 3, 1998, an urban growth boundary initiative.

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

Section 1. That the City Council orders submitted to the voters at the General Election on November 3, 1998, the following question:

"Shall an ordinance be adopted that amends the Milpitas General Land Use Plan to create an Urban Growth Boundary near the base of the Milpitas foothills, effective for twenty years, that would limit development within the City to the valley floor and the base of the foothills by prohibiting the City from providing city services such as police, fire, sewer and water to new land use developments in the hillside area?"	YES
	NO

Section 2. The ordinance to be enacted by the voters pursuant to Section 1 above shall be in the form set forth in Exhibit A, attached hereto.

Section 3. This measure is submitted to the voters pursuant to Elections Code § 9222.

Section 4. The ballots used at the election shall be in the form and content as is required by law.

PASSED AND ADOPTED this 7th day of July, 1998, by the following vote:

AYES: (3) Vice Mayor Livengood and Councilmembers Lawson and Lee

NOES: (0) None

ABSENT: (1) Dixon

ABSTAIN: (1) Mayor Manayan

ATTEST:

Gail Blalock, City Clerk

APPROVED:

Robert Livengood, Vice Mayor

APPROVED AS TO FORM:

for Steven T. Mattas, City Attorney

EXHIBIT A

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MILPITAS APPROVING A GENERAL PLAN AMENDMENT TO ESTABLISH AN URBAN GROWTH BOUNDARY AND TO REQUEST RELOCATION OF THE URBAN SERVICE AREA BOUNDARY

THE PEOPLE OF THE CITY OF MILPITAS DO ORDAIN AS FOLLOWS:

Section 1. Statement of Purpose and Findings:

A. The hillsides of the Diablo Range within the Milpitas Planning Area are a unique scenic asset to the City, County and region that significantly contributes to the quality of life of Milpitas residents.

B. This initiative is intended to preserve the existing predominantly natural and rural character of the Milpitas hillsides by:

(i) Confining urban land uses to the flatlands/valley floor.

(ii) Recognizing the geologic, topographical and financial constraints on development in rural areas of the hillsides.

(iii) Minimizing development in hillside areas of high visibility.

C. This initiative is also intended to conserve the City's financial resources and prevent any reduction in the quality of City services by:

(i) Minimizing hillside development that would require costly infrastructure including, streets and sewers, storm drains and water lines and would jeopardize police and fire services by extending the area where service must be provided. To that end, if this ordinance is adopted by the voters and if LAFCO approves the relocation of the Urban Service Area boundary area to be coterminous with the Urban Growth Boundary, the City will reissue the General Plan Land Use map to show the relocated Urban Service Area boundary.

(ii) Preventing the City from incurring high infrastructure maintenance costs for services in the hillsides. For example, in fiscal years 1997-1998 and 1998-1999, the City spent over $600,000 from the General Fund to repair storm related damage to the sewer system within the hillsides. As a result of this and similar potential expenditures in the future, less money could be available to pay services in other areas, reducing the quality of services provided to existing neighborhoods on the valley floor.

D. Adequate housing is essential to a thriving community. The Milpitas General Plan promotes efficient housing development for all economic segments of the community through measures such as encouraging infill development, encouraging the creation of affordable housing units, and seeking to diversify housing opportunities in the City. The General Plan provided that 3,662 new units would be constructed to meet the City's share of regional housing needs. Of these units, the General Plan estimated that only 199 (5%) would be constructed in the hillsides. This initiative is consistent with these provisions and predictions because it allows them to be satisfied by development of a variety of housing types, including affordable housing, within the Urban Growth Boundary.

Section 2. General Plan Amendment:

A. Amendments to the General Plan to establish an urban growth boundary and request relocation of the Urban Service Area boundary: The City of Milpitas General Plan, dated July 1997 as amended through August 3, 1998, Land Use Element, Section 2.6 Land Use Principles and Policies, Land Use Implementing Policies 2.a I-2.1 and 2.a I-2.2 are amended as follows:

"2.a I-2.1 Maintain an Urban Growth Boundary in the hillside area, as shown on the General Plan Land Use Map, that shall be effective until December 31, 2018 and, except as otherwise provided below, shall not be moved until that time."

A. City Services Prohibited in Area Outside the Urban Growth Boundary and Outside the City Limits: The City shall not process, approve or authorize construction or provision of any City service or City service extension to any property or people in that area located both outside of the Urban Growth Boundary and outside of the city limits of the City of Milpitas, except as expressly provided in this Policy 2.a I-2.1A. "City service" means any water, sanitary sewer, storm drain, flood control, road maintenance, sidewalk maintenance, police, fire or emergency medical service, including construction of related infrastructure that the City, its agents, its departments, or its contractors, provides to any property or people within the City limits. The City may provide a City service or City service extension to property or people outside of the Urban Growth Boundary only if:

(i) Declared Public Emergency: The City Council declares a local emergency pursuant to Government Code § 8630 et seq. or Milpitas Municipal Code Title V, Chapter V-1 as they presently exist or may be amended in the future and the City Council finds, based on substantial evidence, that: (1) the extension or provision of service on a temporary basis is necessary to ensure public safety and (2) the extension or provision of service is for a specified limited time period;

(ii) Urgent Public Health or Safety Concern Affecting Existing Development: The City Council finds, based on substantial evidence, that: (1) an urgent public health or safety concern exists; (2) an independent, certified professional engineer approved by the City has concluded that the only economically justifiable solution to that public health or safety concern is to provide or extend City service; (3) on or before November 3, 1998, the legal parcel affected by that public health or safety concern had either

a vested right to develop an approved land use or an approved and recorded final subdivision map pursuant to which residential units had been constructed within said subdivision; and 4) the applicant for the provision or extension of such City service has agreed to pay for its proportionate share of the service or service extension costs including, but not limited to, any engineering, design, inspection, land acquisition or review or other capital or operating costs incurred by the City. Any City *service extension constructed under this Policy 2.a I-2.1A.(ii) shall be constructed in accordance with Section XI-1-7 of the Milpitas Municipal Code (regarding developer installation of improvements);*

(iii) *Parks and Open Space: The City Council finds, based on substantial evidence, that: (1) the property is operated as park or open space for the benefit of the general public and owned by either a private open-space trust or a government agency, authority, or district; (2) there would be minimal alteration (e.g. trails and fire roads) of the natural land forms as a result of any land use approval or modification; and (3) the property either will be used exclusively for passive recreational uses consistent with the rural character and indigenous plant and animal species of the hillsides, or contains a designated historic building(s) or setting that will be used for a purpose related to the historic significance of the site. Any property that is extended or provided City service under this Policy 2.a I-2.1.A.(i) shall not be used as golf course, ball field, ball court, amphitheater, amusement park, gymnasium or auditorium; or*

(iv) *Mutual Aid Agreements with Other Public Agencies: The City Council finds, based on substantial evidence, that: (1) the City services to be provided are limited to police, fire or emergency medical services, (2) such services are provided pursuant to a written agreement between the City of Milpitas and another public agency, (3) the agreement provides mutual benefits to both the City of Milpitas and the other agency to the agreement, and (4) the agreement benefits all or substantially all of the residents of the City of Milpitas.*

B. *Limited City Services Available in Areas Outside the Urban Growth Boundary and Within the City Limits: The City may provide police, fire or emergency medical service to any property or people in that area located both outside of the Urban Growth Boundary and within the city limits of the City of Milpitas. "City police, fire or emergency medical service" means any police, fire or emergency medical service, including construction of directly related infrastructure [except new stations] that the City, its departments, agents or contractors provides to any property or people within the City limits. Other than police, fire and emergency medical services specified herein, the City shall not process, approve or authorize construction or provision of any City service or City service extension to any property or people in that area located both outside of the Urban Growth Boundary and within the city limits of the City of Milpitas, except as expressly provided in this Policy 2.a I-2.1A. For purposes of this section, "City service" means any water, sanitary sewer, storm drain, flood control, road maintenance, sidewalk maintenance, including construction of related infrastructure that the*

City, its agents, its departments, or its contractors, provides to any property or people within the City limits. Notwithstanding any prohibition provided in this paragraph, the City may continue to maintain and/or repair that portion of Calaveras Road within the City limits and outside of the Urban Growth Boundary.

C. *Amendments to the Urban Growth Boundary: Until December 31, 2018, the Urban Growth Boundary may only be amended as follows:*

1. *The Urban Growth Boundary may be amended by a vote of the People of the City of Milpitas;*

2. *To comply with state law regarding the provision of housing for all economic segments of the community, the City Council may amend the Urban Growth Boundary to accommodate lands designated or to be designated for residential uses. No more than 3 acres of land may be brought within the Urban Growth Boundary for this purpose in any calendar year. Land added to the Urban Growth Boundary pursuant to this section must be contiguous to land already within the Urban Growth Boundary. Such amendment may be adopted only if the City Council makes all of the following findings, based on substantial evidence:*

   a. *That the land is to be included within the Urban Growth Boundary not designated as existing regional parks in the Santa Clara County General Plan adopted December 20, 1994, as amended through August 3, 1998; and*

   b. *That the land is immediately adjacent to (i) the existing Urban Growth Boundary, and (ii) existing serviceable water and sewer connections;*

   c. *That the proposed development will consist of primarily low and very low income housing pursuant to the Housing Element of this General Plan; and*

   d. *That there is no existing residentially designated land within the Urban Growth Boundary to accommodate the proposed development and it is not reasonably feasible to accommodate the proposed development by redesignating lands inside the Urban Growth Boundary for low and very low income housing; and*

   e. *That the proposed development is necessary to comply with state law requirements for provision of low and very low income housing and the area of land within the proposed development will not exceed the minimum necessary to comply with state law; or*

3. *The City Council may amend the Urban Growth Boundary if it makes both of the following findings:*

   a. *The application of any aspect of the Urban Growth Boundary*

above would constitute an unconstitutional taking of a landowner's property; and

b. That the amendment and associated land use designation under consideration by the City Council will allow additional land uses approved by the City Council only to the minimum extent necessary to avoid said unconstitutional taking of the landowner's property.

D. Review of the Urban Growth Boundary: In 2015, prior to its expiration in 2018, the City shall begin a comprehensive review of the Urban Growth Boundary.

2.a I-2.2 Not later than 45 days after approval of this General Plan Amendment, the City shall take all necessary actions to apply for and request that the Santa Clara County Local Agency Formation Commission ("SC LAFCO") relocate the Urban Service Area boundary so that it is coterminous with the Urban Growth Boundary. The City shall take all actions within the scope of its jurisdiction to support and facilitate SC LAFCO's action regarding the City's request to relocate the Urban Service Area Boundary.

B. Amendment to the Milpitas General Plan Land Use Map: The City of Milpitas General Plan Land Use Map is hereby amended to show the location of the Urban Growth Boundary as shown on Exhibit A attached hereto and incorporated herein by reference.

C. Conforming Amendments to the General Plan:

1. The City of Milpitas General Plan, dated July 1997 as amended through August 3, 1998, Land Use Element, is amended as follows. Text to be inserted into the General Plan is indicated in *italic* while text to be stricken is presented in underline, text in standard text currently appears in the General Plan and is not affected by this initiative:

a. Land Use Principles and Policies, Guiding Principle 2.a-G-6 is added which provides:

"Maintain an Urban Growth Boundary to preserve the existing rural character of the hillsides and avoid costly infrastructure extension thereto."

b. Table 2-2, titled "1996 Citywide Land Availability" summarizes the status, as of the Spring of 1996, of developed and vacant land within City limits under different General Plan land use classifications. In this Table, after the heading "Undeveloped" in the third column, a new footnote 2 is added which provides:

"As a result of the Urban Growth Boundary described in Implementing Policies 2.a I-2.1 and 2.a I-2.2, certain of the units and acres of undeveloped hillside land reflected in this table may not be developed until after 2018."

In that Table 2-2, the current footnote 2 is renumbered to footnote 3.

c. Table 2-3, titled "Milpitas General Plan Land Use/Zoning Consistency" summarizes the City of Milpitas zoning districts that are consistent with each General Plan land use classification. In this Table, on the far left text column after the word "HILLSIDE", a new footnote is added which provides:

"See Implementing Policies 2.a I-2.1 and 2.a I-2.2, creating an Urban Growth Boundary, for limitations on City services to most lands under the Hillside land use classification."

d. Section 2.2, titled "Land Use Classifications" discusses the General Plan land use designations classifications. The fourth paragraph of page 2-6 in the general discussion of the land use classifications in Section 2.2 is revised to provide:

"The density/intensity standards do not imply that development projects will be approved at the maximum density or intensity specified for each use. *Where ranges are provided,* other General Plan policies, Z zoning regulations consistent with General Plan policies and/or site conditions may reduce development potential within the ranges."

e. Section 2.2, at page 2-11 and page 2-12, discusses the General Plan land use classifications for the Hillside Area. The fifth paragraph on page 2-11 discusses residential densities within the Hillside Area. That paragraph is revised to provide:

"Residential densities are per gross acre of developable land provided that at least one housing unit may be built on each existing parcel designated for residential use. Densities outlined in the classifications are maximums for the classifications; these decrease with increase in slope as outlined in the classifications and defined in detail in the City's Zoning Ordinance. The City may further reduce the permitted density on a site if such a reduction is necessary or appropriate for reasons of site conditions, *availability of City services*, access, views or geologic hazards. *For example, development in the hillside areas outside the Urban Growth Boundary during the term of the Urban Growth Boundary may be affected because City services will not be provided to the Hillside Area except under limited circumstances.* Second units permitted by local regulations and state access-mandated density bonuses for affordable housing are in addition to densities otherwise permitted."

Section 3. Exemptions for Certain Projects:

This initiative shall not apply to any development project that has, as of the effective date of the initiative, a vested right pursuant to state law.

Section 4. **Severability and Interpretation:**

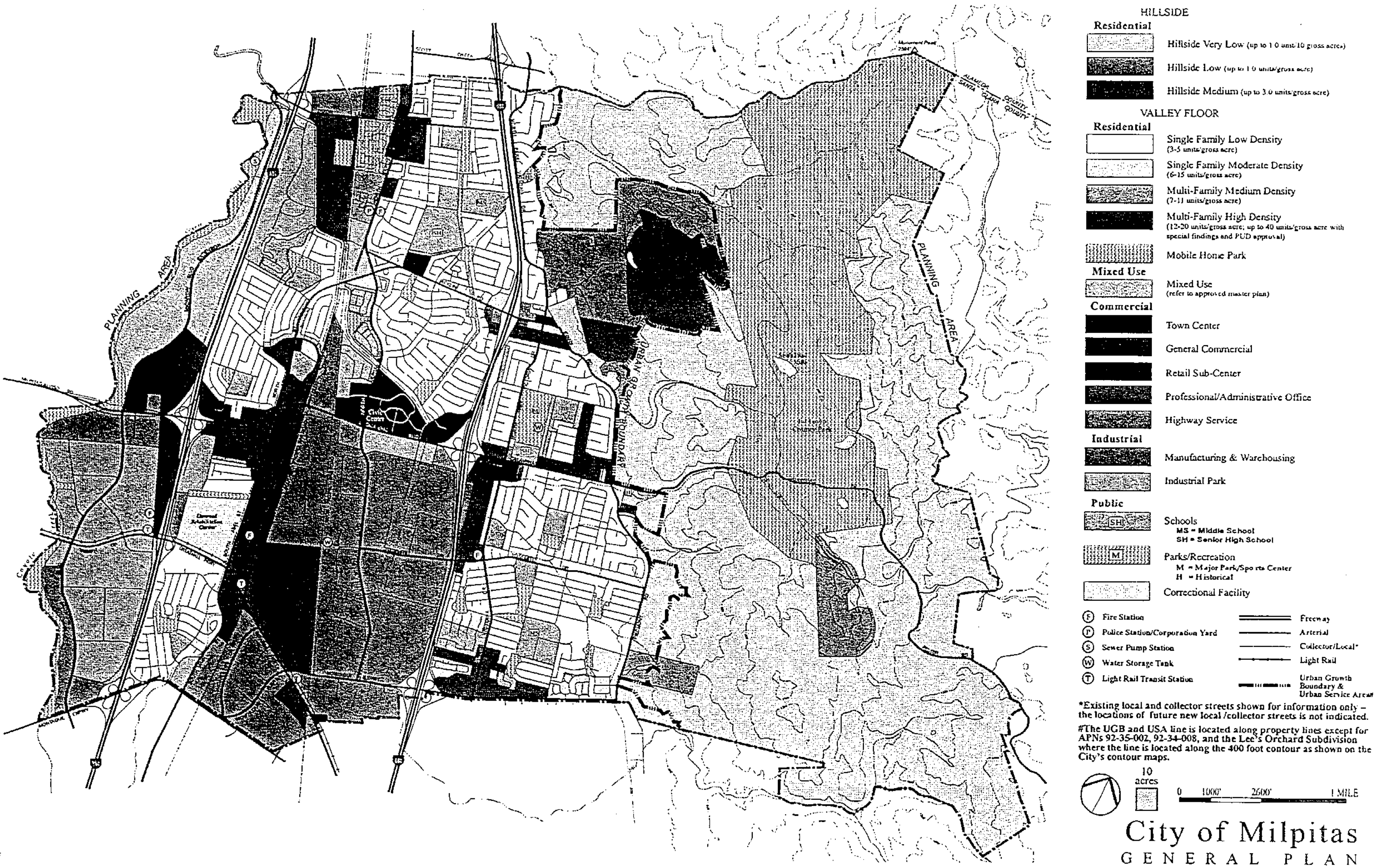
This initiative shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this measure. The People of the City of Milpitas hereby declare that this initiative, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this initiative that can be given effect without the invalid application. This initiative shall be broadly construed in order to achieve the purposes stated in this initiative.

Section 5. **Amendment or Repeal:**

Except as otherwise provided herein, provisions of this initiative may be amended or repealed only by a vote of the People of the City of Milpitas.

Exhibit List

Exhibit A - Illustrative Map of Urban Growth Boundary



City of Milpitas
GENERAL PLAN
June 1998

Res #6796

Measure Z
Urban Growth Boundary

November 3, 1998
General Election

"Shall an ordinance be adopted that amends the Milpitas General Land Use Plan to create an Urban Growth Boundary near the base of the Milpitas foothills, effective for twenty years, that would limit development within the City to the valley floor and the base of the foothills by prohibiting the City from providing city services such as police, fire, sewer and water to new land use developments in the hillside area?"

Yes votes	6,065 / **55.3%**
No votes	4,897 / **44.7%**

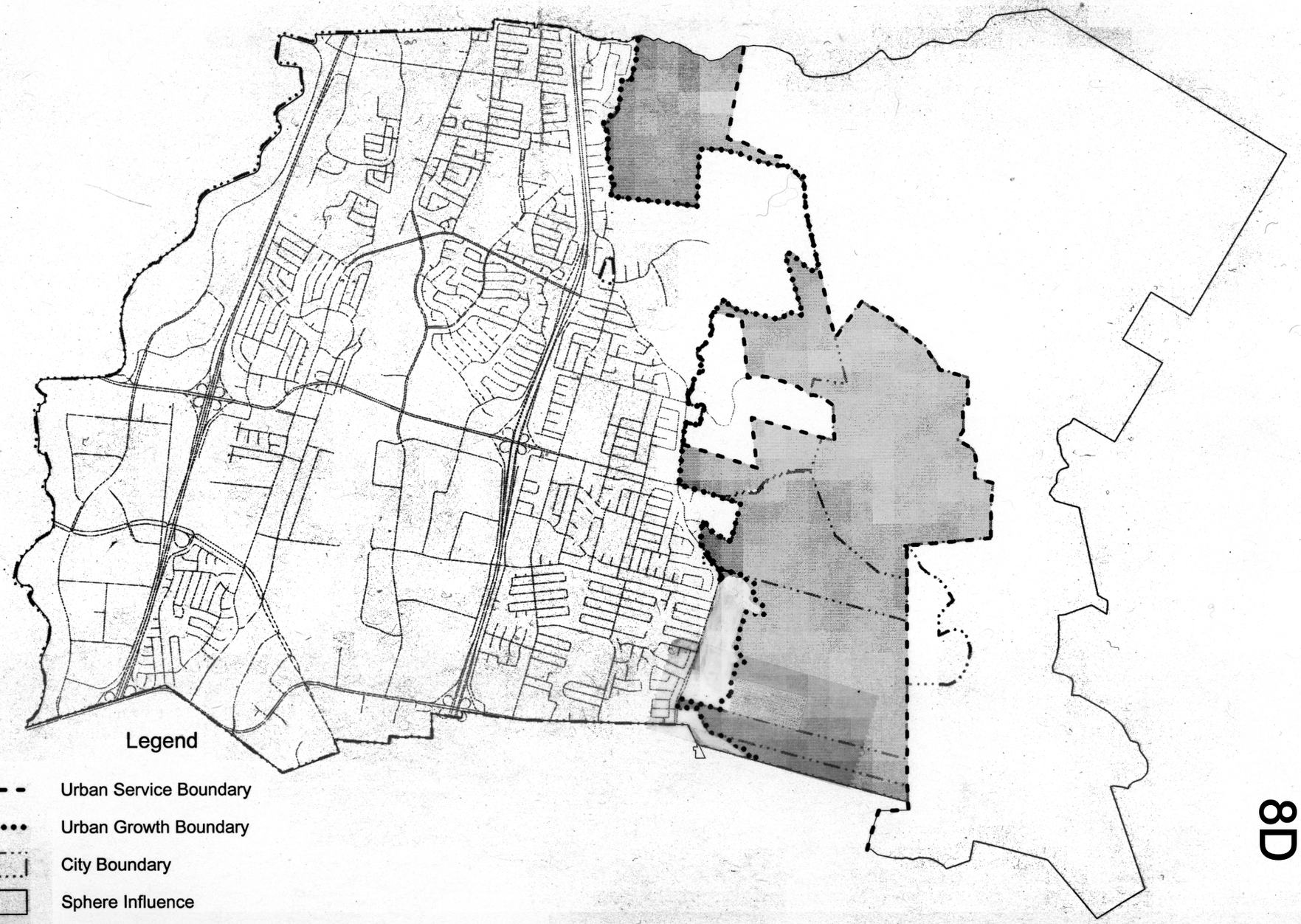
Measure T
Amendments to Hillside Ordinance and General Plan

November 2, 2004
General Election

"Shall an ordinance be adopted that requires that, until December 31, 2018, any amendments to the existing "Hillside Combining District" Ordinance and any amendments to the general plan land use designation for lands currently designated as "Hillside" property be approved by the voters before becoming effective?"

Yes votes	10,466 / 65.85%
No votes	5,428 / 34.15%

CITY OF MILPITAS URBAN SERVICE AREA BOUNDARY RELOCATION MAP



Legend

- Urban Service Boundary
- Urban Growth Boundary
- City Boundary
- Sphere Influence
- Properties affected by USA Relocation

8D

*10

City Clerk's Office
MAY 28 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: **ARK – SAM Camp**
SAM Camp is under the nonprofit organization called Alliance Renewal Kingdom Ministries (ARK); see IRS tax-exempt letter attached

Is there a Milpitas branch or affiliation? **Yes, located in Milpitas**

Mailing Address: **745 Ames Avenue**
Milpitas, CA 95035

Contact Person: **Connie Segreto** Telephone No. **408-832-5967**

Email Address: **connieseg@comcast.net**

What is your request? Donation Amount Requested **$500**

OR Fee Requested to be waived (type and $ amount) **N/A**

Event date(s): **August 3 – 7, 2015**

What is the purpose of the event? **To provide a very low-cost, safe and fun Science, Arts and Math learning experience for children in grades 1-12. No child is turned away for lack of funds – scholarships are provided. See attached brochure.**

How will the Milpitas community benefit from this event? **Milpitas kids who might otherwise not have an opportunity to go to camp and be out on the streets with nothing to do will enjoy a great week of fun and learning in a safe, nurturing environment.**

What % of the fund raising proceeds will benefit Milpitas community? **100% of funds go for the camp**

How will the City's contribution (if granted) be recognized in any publicity? **The City's contribution will be acknowledged on the SAM Camp website which is www.samcamp.org.**

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: Connie Segreto Date: **5-25-15**

Print Name & Title: **Connie Segreto, Co-Founder**

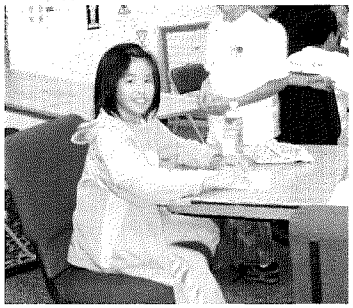
SAM CAMP FUN!

Creative teamwork...

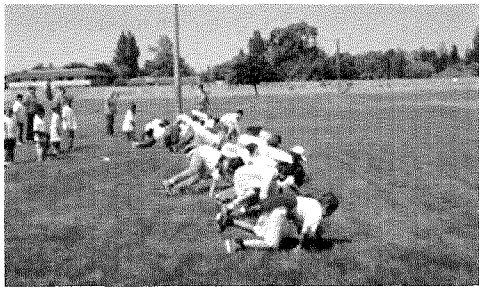
It was so much fun. I liked the music and I learned all about teamwork. - Kaitlin, 6

SAM Camp was exciting. I learned something new everyday and it helped me get closer to God. - Meghan, 12

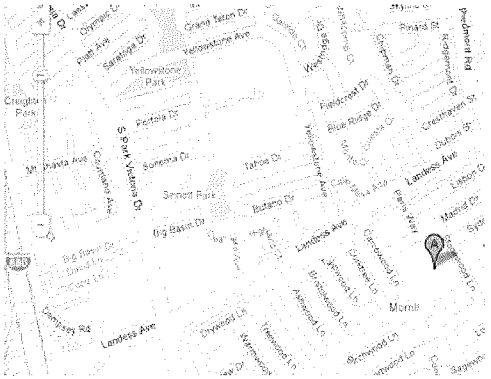
In class...



On the field...



My four boys really enjoyed SAM Camp! The love and friendship of the teachers and kids touched their hearts. They can't wait for this year's camp. - Jocelyn



SAM Camp is located at:

Milpitas Christian School
3435 Birchwood Lane
San Jose, CA 95132

From 680
Exit Landess Avenue
Right on Corktree Lane
Left on Birchwood Lane
Campus is on the left

SAM Camp includes bible-based teaching.
Classes subject to change based on demand.

REGISTER AT:
www.samcamp.org

Questions?
Email: registrar@samcamp.org

AFFORDABLE
Fees: $55 per child per week
$110 per family per week
Includes hot lunch!

Scholarships available. Just check the *scholarship* box on the registration form.

Can you help sponsor a child?
Make check payable to: **ARK**
Mail to: **SAM Camp**
745 Ames Ave.
Milpitas, CA 95035

SAM Camp

SUMMER'S BEST WEEK!

A FUN learning experience

SAM Camp

August 3 - 7, 2014
9am to 2:30pm

After care available for working parents until 5:30pm for additional fee.

Sign up now!
www.samcamp.org

SAM KIDS	*TEEN EDITION*
Grades 1- 5	Middle & High School

Discover your talents!
Sharpen your skills! Express yourself!
Learn COOL STUFF and get ahead for the next school year!

Qualified teachers and coaches in a fun and nurturing environment.

Last year's campers can't wait for this year's SAM Camp! Come join them

Teen Edition
Middle and High School

Science
Cool activities! Hands-on experiments.

Wanna be a *rock* star?
Take a deep dive with us into the earth's crust and its –say what? – radioactive polonium halos! Explore the properties of water, minerals, fossils, and sediments.

Does it *matter*? What's *your take?*
Enter the realm of energy, matter, and spacetime.

Cool discussions: critical thinking.
Natural selection, ecology, human physiology. Find out what they have to do with you.

Arts
An exploration of all things creative!

Music. Drama. Creative Writing.
Write a poem, sing, or dance. Now's your chance! No competition – it's your own personal expression.

Create your own masterpiece!

Sculpture.
Manipulate clay with wooden and wire tools.

Painting.
Explore color theory, value, and composition through acrylics.

Drawing.
The foundation of all visual arts. Learn to draw like a pro!

Graphic Design.
Learn to make funny or fabulous photos. Make art on a computer.

Math
Architecture and money have practical applications. See how!

Architecture
Learn principles of geometry while designing and constructing your own project. You'll love the hands on side of this math class!

Dollars and Sense
Explore percentages in a practical way - learn how much it costs to use a credit card or buy a car on time. Shopping at the mall will never be the same!

Sports Fitness

Tips from the coach.
Improve your skills - enjoy your pick:
Soccer, basketball, baseball, or fitness.

Chess

Lightning attacks!
Basic checkmates, back rank mates, mid-game queen mates, all kinds of *mates* – sorry no *dates*!

Poison pawns!
Add to your arsenal: *forks, pins, discovery, skewers,* and *promotion.*

SAM KIDS
Grades 1-5

Science
***Gasses and gravity and fire!* Oh my!**

Cool demonstrations. Hands-on experiments. Make fizzy sodas and gliders zoom!

Don't miss the outrageous fun! Be there!
Suck an egg into a bottle and watch paper disappear in a flame without leaving a trace! Magical? It's science!

Arts
Art, dance, music – *creating is fun!*

A unique artistic experience.
Crafts, painting, music, dance and story time to make imaginations grow!

Creative ways to express yourself.
What makes you special? Sing, dance, design a card, and draw your favorite picture.

Math

Fun with facts and figures.
Bet you never thought math could be this much fun! Learn new math skills to help you be the game champion.

Great outdoor play!
Fun playground equipment and lots of space to run and get the wiggles out!

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: APR 18 2008

ALLIANCE RENEWAL KINGDOM MINISTRIES
919 HANSON CT
MILPITAS, CA 95035

Employer Identification Number:
26-0674650
DLN:
608101074
Contact Person:
DAVID A DOEKER ID# 31168
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
170(b)(1)(A)(vi)
Form 990 Required:
Yes
Effective Date of Exemption:
August 2, 2007
Contribution Deductibility:
Yes
Advance Ruling Ending Date:
December 31, 2011
Addendum Applies:
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

See attached no longer required

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

ALLIANCE RENEWAL KINGDOM MINISTRIES

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements

Enclosures: Publication 4221-PC
Statute Extension

Letter 1045 (DO/CG)

*11

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

City Clerk's Office
JUN 04 2015
RECEIVED

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: **South Bay Kids**

Is there a Milpitas branch or affiliation? **Yes**

Mailing Address: **330 S. Abel Street, Milpitas CA 95035**

Contact Person: **Joe Santoro** Telephone No. **408-839-0160**

Email Address: **joesantoro1021@yahoo.com**

What is your request? Donation Amount Requested ~~**$1,480.00**~~ OR

Fee Requested to be waived (type and $ amount) **Rental Fees for MCC Auditorium** ~~$1,480.00~~ $1,480.00

Event date(s): **July 11, 2015** 6:00PM / 2:00PM

What is the purpose of the event? **Fundraiser for South Bay Kids**
"We've Got The Music!" (Concert)

How will the Milpitas community benefit from this event? **South Bay Kids has been an integral part of the Milpitas Community for over 25 years, providing entertainment at many local events free of charge. SBK has also provided sound systems and sound techs for Milpitas events, as well. Director Joe Santoro has been a member of the Milpitas Art Council, is a resident, and a community supporter.**

What % of the fund raising proceeds will benefit Milpitas community? **Proceeds from the fundraising will go to sustain South Bay Kids, an organization who provides entertainment at many city and community events, all for no charge.**

How will the City's contribution (if granted) be recognized in any publicity? **Recognition will involve all our flyers, social media campaigns, email campaigns, during the event itself, and will be included in our program book as a SBK supporter.**

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: 6-4-15

Print Name & Title: Sheryl Staley, President/Boosters
408-712-5280

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: SEP 12 2014

SOUTH BAY KIDS
C/O JOE SANTORO
330 SOUTH ABEL ST
MILPITAS, CA 95035

Employer Identification Number:
77-0506516
DLN:
17053134392024
Contact Person:
CUSTOMER SERVICE ID# 31954
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
170(b)(1)(A)(vi)
Form 990 Required:
Yes
Effective Date of Exemption:
May 15, 2010
Contribution Deductibility:
Yes
Addendum Applies:
Yes

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

Sincerely,

Tamera Ripperda

Director, Exempt Organizations

Letter 947

Permit Contract

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

Permit #18060, Approved

Jun 3, 2015 8:15 AM

MILPITAS Recreation Services

Company: South Bay School Of Music Arts
330 S. Abel St.
Milpitas, CA 95035

Agent: Joe Santoro

Prepared By: Justin Yount

Work: (408) 839-0160 Home: (408) 839-0160

Charges	Taxes	Discounts	Total Charges	Deposits	Deposit Taxes	Total Payments	Refunds	Balance
$980.00	$0	$0	$980.00	$500.00	$0	$0	$0	$1,480.00

RESERVATIONS

Event	Resource	Center	Notes
South Bay Kids Music/Concert Type: Non-Profit Attend/Qty: 300	MCC Auditorium	Milpitas Community Center 457 E Calaveras Blvd Milpitas, Ca 95035 (408) 586-3210	--

Days Requested

Day	Date	Event Begins	Duration	Event Ends
Saturday	Jul 11, 2015	10:00 AM	12 hours	Jul 11, 2015 at 10:00 PM

Summary	Notes
Total Number of Dates: 1 Total Time: 12 hours	--

CHARGES

Description	Event / Resource	Unit Fee	Units	Tax	Charge
Application Fee	South Bay Kids Music/Concert #18060 MCC Auditorium	$20.00	1.00	--	$20.00
Hourly Rental Fee	South Bay Kids Music/Concert #18060 MCC Auditorium	$80.00	12.00	--	$960.00

DEPOSITS

Deposit Charge	Event / Resource	Charge	Tax	Amount paid	Refunds	Balance
Rental Deposit	South Bay Kids Music/Concert #18060 MCC Auditorium	$500.00	$0	$0	$0	$500.00

Payment Schedule for Original Balance of $1,480.00

Due Date	Amount Due	Amount Paid	Withdrawal Adjustment	Balance
Jun 11, 2015	$1,480.00	$0	$0	$1,480.00
			Current Balance	$1,480.00

DISCLAIMERS

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

CUSTOM QUESTIONS

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

WAIVERS

Rental Waiver
Waiver for:Joe Santoro
Due Date: Jul 11, 2015

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

Waiver Signed by:South Bay School Of Music Arts on Jun 3, 2015

Signature: _____

Thank you for renting a Milpitas Recreation Services' facility!

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

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

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 June 2, 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:

_____
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.

*13

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 June 2, 2015, upon motion by Councilmember Giordano, 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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
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.

Recording Requested by and
When Recorded Mail to:

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

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

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING INITIAL ACCEPTANCE AND REDUCING PERFORMANCE BOND OF MCCARTHY BLVD. LIGHTING & LANDSCAPING IMPROVEMENTS PHASE 1, PROJECT NO. 3402, AND GRANTING AUTHORIZATION TO THE DIRECTOR OF ENGINEERING TO ISSUE THE NOTICE OF FINAL ACCEPTANCE AFTER THE ONE-YEAR WARRANTY PERIOD AND TO RELEASE AND DISCHARGE THE PERFORMANCE BOND

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

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

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

2. The City of Milpitas does hereby accept said improvement as completed on this 16th day of June, 2015, and does hereby authorize and direct the Director of Engineering of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Sections 8182 and 9200-9208 of the Civil Code of the State of California, and does hereby authorize and direct the Director of Engineering to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day's labor or force account. The penal sum of the faithful performance bond securing said improvement may be reduced to the sum of $35,284.52 upon request of principal and surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond, provided that said term shall not be less than one year.

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

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

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

Recording Requested by and
When Recorded Mail to:

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

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

CITY OF MILPITAS

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

NOTICE IS HEREBY GIVEN:

1. On or about December 4, 2014, the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: McCarthy Boulevard Lighting & Landscape Improvements Phase 1, Project No. 3402.

2. A description of the site of which the City is owner for said work of improvement is: McCarthy Boulevard and South Ranch Drive, and McCarthy Boulevard near City limits in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.

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

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

5. A general statement of the kind of work done or materials furnished to the City is as follows: Lighting, landscaping and irrigation improvements on McCarthy Boulevard.

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

7. Said work of improvement was accepted by the Milpitas City Council as completed on June 16, 2015.

****

I, the undersigned, declare that I am the City Engineer of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on June 16, 2015, at Milpitas, California.

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

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

CITY OF MILPITAS
ENGINEERING DIVISION
BID SUMMARY

*15A

Project Name: Automated Water Meter
Project No. : 7121
Bid Date: 5/14/2014 @ 2:00 PM

	BASED BID			**Engineer's Estimate**		**Preston Pipeline**	
ITEM	**DESCRIPTION**	**Qty.**	**UNIT**	**Unit Cost**	**Extension**	**Unit Cost**	**Extension**
1	Mobilization (5% of total)	1	LS	$8,750.00	$8,750.00	$5,000.00	$5,000.00
2	Traffic Control (5% of total)	1	LS	$8,750.00	$8,750.00	$5,000.00	$5,000.00
3	Sheeting, Shoring, & Bracing	1	LS	$3,750.00	$3,750.00	$3,000.00	$3,000.00
4	Water Pollution Control Plan	1	LS	$3,750.00	$3,750.00	$1,500.00	$1,500.00
5	Water Meter Location 1	1	LS	$98,877.43	$98,877.43	$80,000.00	$80,000.00
6	Water Meter Location 2	1	LS	$82,057.43	$82,057.43	$85,000.00	$85,000.00
7	Water Meter Location 3	1	LS	$101,524.93	$101,524.93	$99,500.00	$99,500.00
8	Mainline Valve	2	EA	$6,250.00	$12,500.00	$14,800.00	$29,600.00
	TOTAL				$319,959.78		**$308,600.00**
						APPARENT LOW BIDDER	

Construction Change Order Policy for Automated Water Meter (Phase 1) Project No. 7121

2007 City Council Approved Construction Change Order Policy

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

Automated Water Meter (Phase 1) Project Change Order Policy

Construction Award Award Amount	**Individual Administrative Change Order Authority**	**Cumulative Change Order Authority**
$308,600	N/A	$46,000

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE PLANS AND SPECIFICATIONS FOR AUTOMATED WATER METER (PHASE 1), PROJECT NO. 7121; AWARDING A CONSTRUCTION CONTRACT TO AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH THE LOWEST RESPONSIBLE BIDDER, PRESTON PIPELINES, IN THE AMOUNT OF $308,600.00; AND AUTHORIZING THE DIRECTOR OF ENGINEERING TO NEGOTIATE AND EXECUTE CHANGE ORDER(S) IN THE CUMULATIVE AMOUNT NOT TO EXCEED $46,000 FOR THE AUTOMATED WATER METER (PHASE 1) PROJECT NO. 7121

WHEREAS, Automated Water Meter (Phase 1) Project No. 7121 provides for the installation of three water meters servicing the Pioneer Mobile Home Park on Dixon Landing Road and Mobilodge on North Milpitas Boulevard; and

WHEREAS, the Engineer's Estimate for the base bid Project work was $320,000; and

WHEREAS, the Project was advertised and one (1) sealed bid proposal was received and opened on May 14, 2015, and the lowest responsible base bid was submitted by Preston Pipelines in the amount of $308,600; and

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

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

WHEREAS, due to the Project's tight completion schedule and ability for staff to respond swiftly to unanticipated construction conditions in order to limit potential claims or risk to the City, staff recommends the City Council authorize the Director of Engineering to negotiate and execute change order(s) in an amount not to exceed the construction contingency established for this Project of $46,000, which is approximately fifteen percent (15%) of the estimated construction cost.

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

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

2. The City Council hereby approves the Plans and Specifications for Automated Water Meter (Phase 1), Project No. 7121.

3. The City Council herby awards the construction contract to and authorizes the City Manager to execute a construction contract and related documents with the lowest responsible bidder, Preston Pipelines for the Automated Water Meter (Phase 1) Project No. 7121, in the amount of $308,600.

4. The Director of Engineering is hereby authorized to negotiate and execute contract change order(s) for the Automated Water Meter (Phase 1), Project No. 7121 in the cumulative contingency amount not to exceed $46,000 for the Project.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

*16A

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS RELEASING UNCLAIMED CHECKS

WHEREAS, the attached list of checks and credits has been outstanding and unclaimed for more than one year; and

WHEREAS, each of the checks listed on the attached summary is less than $15, or for an amount in which the depositor's name is unknown.

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 unclaimed checks and credits on the attached list in the total amount of $3,487.34 shall be transferred to the General Fund in accordance with Section 50055 of the California Government Code.

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

UNCLAIMED CHECKS/CREDITS

Amount Less Than $15.00

Check/Credit Type	Date	Check No.	Amount
Workers Compensation Account:			
	10-Feb-14	17439	14.00
	2-Jun-14	18023	6.27
WORKERS COMPENSATION ACCOUNT TOTAL		**$**	**20.27**
Accounts Payable Account:			
	19-Jul-13	336799	9.38
	19-Jul-13	336965	15.00
	26-Jul-13	337096	5.00
	26-Jul-13	336975	6.73
	26-Jul-13	337020	10.00
	16-Aug-13	337563	15.00
	23-Aug-13	337574	13.57
	13-Sep-13	337934	6.58
	20-Sep-13	338207	15.00
	11-Oct-13	338503	6.77
	11-Oct-13	338565	10.00
	11-Oct-13	338519	11.36
	11-Oct-13	338515	15.00
	01-Nov-13	338992	6.77
	13-Dec-13	339669	6.15
	03-Jan-14	340041	15.00
	21-Feb-14	340901	6.77
	21-Feb-14	340906	6.77
	21-Feb-14	340976	6.77
	21-Mar-14	341490	9.00
	21-Mar-14	341506	10.00
	25-Apr-14	342149	12.20
	09-May-14	342384	9.43
	06-Jun-14	342927	12.04
	27-Jun-14	343439	11.33
ACCOUNTS PAYABLE ACCOUNT TOTAL		**$**	**251.62**

RECREATION ACCOUNTS CREDITS
UNCLAIMED CHECKS/CREDITS
Amount Less Than $15.00

Date	Amount	Date	Amount	Date	Amount
22-Feb-02	7.00	20-Dec-02	5.00	16-May-04	10.00
22-May-02	3.00	20-Dec-02	5.00	19-May-04	10.00
22-May-02	3.00	20-Dec-02	7.25	20-May-04	5.00
22-May-02	3.00	20-Dec-02	10.75	2-Jun-04	1.00
22-May-02	3.00	10-Jan-03	10.00	3-Jun-04	1.00
22-May-02	3.00	5-Feb-03	6.00	30-Jun-04	2.00
22-May-02	6.00	5-Feb-03	7.50	2-Jul-04	7.00
22-May-02	10.00	5-Feb-03	7.50	13-Jul-04	6.00
23-May-02	1.25	5-Feb-03	10.00	26-Jul-04	5.00
10-Jun-02	3.00	11-Feb-03	5.00	29-Jul-04	8.00
10-Jun-02	6.00	11-Mar-03	7.00	29-Jul-04	8.00
10-Jun-02	6.00	14-Apr-03	10.75	9-Aug-04	1.00
10-Jun-02	6.00	15-Apr-03	10.75	12-Aug-04	10.00
18-Jun-02	3.00	15-Apr-03	10.75	13-Aug-04	7.00
24-Jul-02	10.00	15-Apr-03	10.75	16-Aug-04	10.00
14-Aug-02	3.00	8-May-03	10.75	14-Sep-04	4.00
9-Sep-02	2.50	13-May-03	6.00	23-Sep-04	3.00
27-Sep-02	2.50	15-May-03	10.00	23-Sep-04	5.00
30-Sep-02	2.50	28-May-03	10.75	4-Oct-04	1.25
21-Nov-02	10.00	7-Jul-03	4.00	13-Oct-04	1.00
17-Dec-02	7.25	7-Jul-03	8.00	12-Nov-04	8.50
17-Dec-02	7.25	18-Aug-03	10.00	18-Nov-04	6.00
17-Dec-02	7.25	16-Oct-03	15.00	8-Jan-05	13.00
17-Dec-02	7.25	30-Oct-03	1.25	20-Jan-05	10.00
17-Dec-02	7.25	9-Nov-03	8.00	26-Jan-05	1.25
17-Dec-02	7.25	9-Nov-03	8.00	2-Feb-05	11.50
17-Dec-02	7.25	13-Nov-03	10.75	4-Feb-05	7.50
17-Dec-02	14.50	13-Nov-03	10.75	9-Feb-05	1.50
17-Dec-02	14.50	13-Nov-03	10.75	17-Feb-05	10.00
18-Dec-02	7.25	13-Nov-03	10.75	24-Feb-05	5.00
18-Dec-02	7.25	13-Nov-03	10.75	28-Feb-05	2.00
18-Dec-02	7.25	14-Nov-03	8.00	11-Mar-05	11.50
18-Dec-02	7.25	15-Nov-03	10.75	25-Mar-05	12.50
18-Dec-02	7.25	19-Nov-03	8.00	25-Mar-05	12.50
18-Dec-02	7.25	19-Nov-03	8.00	25-Mar-05	12.50
18-Dec-02	7.25	19-Nov-03	8.00	25-Mar-05	12.50
18-Dec-02	7.25	19-Nov-03	8.00	25-Mar-05	12.50
18-Dec-02	7.25	19-Nov-03	10.00	29-Mar-05	11.50
18-Dec-02	7.25	3-Dec-03	0.75	6-Apr-05	1.25
18-Dec-02	7.25	7-Jan-04	0.40	25-Apr-05	5.75
18-Dec-02	7.25	16-Jan-04	0.35	27-Apr-05	2.50
18-Dec-02	7.25	20-Jan-04	3.00	6-May-05	1.25
18-Dec-02	14.50	24-Jan-04	4.00	12-May-05	2.00
18-Dec-02	14.50	10-Mar-04	4.00	13-May-05	7.29
18-Dec-02	14.50	17-Mar-04	5.00	18-May-05	1.00

RECREATION ACCOUNTS CREDITS
UNCLAIMED CHECKS/CREDITS
Amount Less Than $15.00

Date	Amount	Date	Amount	Date	Amount
18-May-05	7.00	8-Dec-06	9.75	1-Jul-08	9.75
18-May-05	7.00	15-Dec-06	9.75	1-Jul-08	9.75
24-May-05	7.00	15-Dec-06	9.75	1-Jul-08	9.75
29-May-05	11.50	15-Dec-06	9.75	1-Jul-08	9.75
6-Jun-05	7.00	15-Dec-06	9.75	1-Jul-08	9.75
27-Jun-05	14.00	15-Dec-06	9.75	1-Jul-08	9.75
14-Jul-05	10.00	18-Dec-06	9.75	11-Jul-08	9.75
11-Aug-05	1.50	18-Dec-06	9.75	11-Jul-08	9.75
17-Aug-05	5.00	18-Dec-06	9.75	16-Jul-08	14.00
13-Sep-05	15.00	18-Dec-06	9.75	29-Jul-08	7.00
15-Sep-05	1.00	18-Dec-06	9.75	29-Jul-08	7.00
12-Nov-05	12.00	18-Dec-06	9.75	4-Aug-08	15.00
16-Nov-05	0.74	18-Dec-06	9.75	7-Sep-08	15.00
22-Dec-05	11.50	22-Jan-07	2.50	8-Sep-08	9.75
19-Jan-06	15.00	5-Mar-07	2.50	8-Sep-08	9.75
23-Jan-06	1.00	5-Mar-07	2.50	8-Sep-08	9.75
23-Jan-06	10.00	5-Mar-07	2.50	9-Sep-08	9.75
7-Mar-06	3.00	26-Mar-07	10.00	9-Sep-08	9.75
5-Apr-06	3.00	20-Apr-07	8.00	9-Sep-08	9.75
5-Apr-06	10.00	7-May-07	15.00	9-Sep-08	9.75
21-May-06	8.83	23-Jun-07	5.00	9-Sep-08	9.75
24-May-06	8.83	27-Jun-07	10.58	9-Sep-08	9.75
24-May-06	8.83	29-Jun-07	7.00	9-Sep-08	9.75
24-May-06	8.83	13-Jul-07	14.00	9-Sep-08	9.75
24-May-06	8.83	18-Jul-07	8.00	9-Sep-08	9.75
25-May-06	8.83	18-Jul-07	10.00	10-Sep-08	9.75
6-Jun-06	7.00	18-Jul-07	10.00	24-Sep-08	1.25
1-Jul-06	13.00	18-Jul-07	10.00	26-Sep-08	6.00
5-Jul-06	2.00	20-Jul-07	6.00	15-Oct-08	15.00
7-Jul-06	5.37	1-Sep-07	10.00	12-Nov-08	15.00
7-Jul-06	5.37	18-Sep-07	2.50	17-Dec-08	2.00
7-Jul-06	5.37	28-Sep-07	11.25	18-Dec-08	1.25
10-Jul-06	10.00	28-Sep-07	12.00	3-Jan-09	1.00
22-Jul-06	6.00	11-Oct-07	14.00	6-Jan-09	1.25
25-Jul-06	1.00	30-Nov-07	3.75	21-Jan-09	8.00
31-Jul-06	6.00	18-Jan-08	1.00	22-Jan-09	3.15
15-Aug-06	7.50	18-Jan-08	1.00	2-Feb-09	3.25
15-Aug-06	7.50	18-Jan-08	8.00	4-Feb-09	6.00
16-Aug-06	9.50	20-Jan-08	0.50	17-Mar-09	7.25
16-Aug-06	9.50	1-Feb-08	3.00	26-May-09	3.00
21-Aug-06	5.00	19-Feb-08	3.00	30-May-09	14.00
14-Sep-06	12.00	29-Mar-08	3.00	16-Jun-09	6.30
18-Sep-06	8.00	28-May-08	9.00	29-Jun-09	8.83
21-Sep-06	2.00	18-Jun-08	10.80	29-Jun-09	8.83
2-Oct-06	8.00	1-Jul-08	9.75	10-Jul-09	10.00

RECREATION ACCOUNTS CREDITS
UNCLAIMED CHECKS/CREDITS
Amount Less Than $15.00

Date	Amount	Date	Amount	Date	Amount
23-Jul-09	5.00	27-Jul-10	8.63	30-Sep-10	7.50
3-Aug-09	6.00	27-Jul-10	8.63	5-Oct-10	3.00
20-Aug-09	1.50	27-Jul-10	8.63	21-Oct-10	11.20
10-Sep-09	3.00	29-Jul-10	6.13	21-Oct-10	11.20
27-Sep-09	12.00	29-Jul-10	6.13	21-Oct-10	11.20
12-Nov-09	3.00	29-Jul-10	6.13	21-Oct-10	11.20
17-Nov-09	2.00	29-Jul-10	6.13	21-Oct-10	13.20
17-Nov-09	3.00	29-Jul-10	6.13	25-Oct-10	11.20
15-Jan-10	3.00	29-Jul-10	6.13	25-Oct-10	11.20
17-Mar-10	2.00	29-Jul-10	6.13	29-Nov-10	12.00
24-Mar-10	6.00	29-Jul-10	8.63	2-Dec-10	13.00
15-Apr-10	10.00	29-Jul-10	12.26	29-Dec-10	6.75
15-Apr-10	10.50	29-Jul-10	12.26	3-Jan-11	4.00
19-Apr-10	4.50	30-Jul-10	8.63	3-Jan-11	4.00
28-Apr-10	2.00	30-Jul-10	12.26	3-Jan-11	4.00
3-May-10	7.00	6-Aug-10	8.63	3-Jan-11	7.50
30-Jun-10	6.13	9-Aug-10	6.13	24-Jan-11	6.00
30-Jun-10	6.13	9-Aug-10	6.13	22-Feb-11	12.00
30-Jun-10	12.26	9-Aug-10	6.13	25-Feb-11	10.50
30-Jun-10	12.26	9-Aug-10	6.13	25-Feb-11	10.50
30-Jun-10	12.26	9-Aug-10	6.13	7-Mar-11	2.50
14-Jul-10	8.63	9-Aug-10	6.13	28-Mar-11	15.00
15-Jul-10	4.13	9-Aug-10	8.63	29-Mar-11	9.50
26-Jul-10	1.50	11-Aug-10	6.13	6-Apr-11	4.50
26-Jul-10	1.50	11-Aug-10	12.26	6-Apr-11	9.00
26-Jul-10	1.50	12-Aug-10	6.13	26-Apr-11	13.50
26-Jul-10	6.13	12-Aug-10	6.13	3-May-11	10.00
26-Jul-10	6.13	12-Aug-10	6.13	10-May-11	7.00
26-Jul-10	6.13	12-Aug-10	6.13	10-May-11	9.75
26-Jul-10	6.13	12-Aug-10	6.13	20-May-11	4.50
26-Jul-10	6.13	12-Aug-10	6.13	7-Jun-11	3.13
26-Jul-10	6.13	12-Aug-10	6.13	11-Jul-11	10.00
26-Jul-10	6.13	12-Aug-10	6.13	18-Jul-11	14.00
26-Jul-10	6.13	12-Aug-10	6.13	19-Jul-11	6.13
26-Jul-10	6.13	12-Aug-10	8.63	20-Jul-11	12.26
26-Jul-10	6.13	12-Aug-10	8.63	21-Jul-11	6.13
26-Jul-10	6.13	12-Aug-10	12.26	21-Jul-11	6.13
26-Jul-10	6.13	12-Aug-10	12.26	21-Jul-11	6.13
26-Jul-10	6.13	12-Aug-10	12.26	21-Jul-11	12.26
26-Jul-10	6.13	12-Aug-10	14.76	21-Jul-11	12.26
26-Jul-10	6.13	24-Aug-10	2.26	25-Jul-11	8.00
26-Jul-10	6.13	3-Sep-10	12.00	25-Jul-11	8.00
26-Jul-10	6.13	6-Sep-10	6.13	25-Jul-11	8.00
26-Jul-10	6.13	21-Sep-10	11.20	2-Aug-11	6.12
26-Jul-10	8.13	21-Sep-10	13.20	3-Aug-11	6.13

RECREATION ACCOUNTS CREDITS
UNCLAIMED CHECKS/CREDITS
Amount Less Than $15.00

Date	Amount
3-Aug-11	6.13
3-Aug-11	6.13
3-Aug-11	6.13
3-Aug-11	6.13
3-Aug-11	6.13
3-Aug-11	12.26
3-Aug-11	12.26
3-Aug-11	12.26
4-Aug-11	5.61
9-Aug-11	8.63
11-Aug-11	8.63
15-Aug-11	6.13
15-Aug-11	6.13
15-Aug-11	6.13
15-Aug-11	6.13
15-Aug-11	12.26
16-Aug-11	6.13
30-Aug-11	0.50
8-Nov-11	10.00
16-Nov-11	11.25
18-Nov-11	8.75
8-Jun-12	10.00
27-Jun-12	2.00

RECREATION CREDITS TOTAL	**$**	**3,215.45**	*
GRANT TOTAL OF CHECKS AND CREDITS	**$**	**3,487.34**	

* The credits amounts are subject to change

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING CONDITION OF APPROVAL LANGUAGE TO REQUIRE AFFORDABLE HOUSING IN ALL NEW RESIDENTIAL DEVELOPMENTS

WHEREAS, there is a significant shortage of affordable housing in the City of Milpitas and the problem continues to increase with the rapid development of market-rate housing; and

WHEREAS, the City of Milpitas Regional Housing Needs Allocation (RHNA) from the Association of Bay Area government (ABAG) for the reporting period from 2015-2023 totals 3,290 housing units as follows:

	Very Low (0%-50% *)	**Low (51%-80%*)**	**Moderate (81%-120%*)**	**Above Moderate (121%+ *)**	**Total**
City of Milpitas	1,004	570	565	1,151	3,290
Percentage Distribution	30.5%	17.3%	17.25%	35.0%	100%

WHEREAS, the City Council has directed City staff to begin the process of completing a nexus study for an affordable housing program that includes inclusionary housing and impact fees for City Council review and consideration; and

WHEREAS, on June 2, 2015, the City Council discussed and considered options to require affordable housing units in current and future development projects prior to completion of a nexus-study; and

WHEREAS, the City Council directed the City Attorney to draft condition of approval language for City Council review and consideration based on the following criteria:

1. Affordable housing requirements shall apply to all completely new residential development applications submitted to the City after June 16, 2015. "Completely new residential development applications" shall mean any residential development project for which no written application of any sort has been previously submitted to the City; and
2. All completely new residential development applications with five (5) or more residential units submitted to the City after June 16, 2015, shall provide five percent (5%) of very low or low-income residential units as determined by City; and
3. Applicant may satisfy the five percent (5%) affordability requirement by (i) providing affordable units and recording a covenant restricting the units to very low-income or low-income for a minimum period of fifty-five (55) years; (ii) contributing an amount to the City equivalent to five percent (5%) of the construction value as determined by the Building Department to be paid at time of building permit issuance; or (iii) a combination 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 City Council hereby approves the following Condition of Approval language to be included in the entitlements for all development projects meeting the criteria set forth above:

Affordable Housing/Inclusionary/Impact Fee

In recognition of the need for affordable housing within the City and as further described in Resolution No. XXX adopted by the City Council on June 16, 2015, Permittee shall participate in an inclusionary affordable housing plan, or similar fair and appropriate mechanism, to support affordable housing, if established by the City Council in the future, by: (1) providing five percent (5%) of all newly-constructed dwelling units in the residential development as very low-income or low-income to be developed and offered as affordable housing to very low-income and low-income households; or (2) prior to building permit issuance, pay a fee in lieu of all or some of the inclusionary units, should such an inclusionary housing plan, or similar fair and appropriate mechanism, be established by the City Council.

The amount of in-lieu fee to be paid shall be the lesser amount of (i) the amount in effect pursuant to the implementing City Council ordinance or resolution at the time full payment is made to the City at the time of building permit issuance, or (ii) the amount equivalent to five percent (5%) of the construction value as determined by the Building Department. In the event the nexus study initiated by the City supports less than five percent (5%) levels of affordable housing, this condition shall only require affordable housing commitment at rates supported by the nexus study on and after such time as that study is completed and adopted by the City Council.

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

Fifth Amendment to the Master Contract Between the County of Santa Clara and City of Milpitas

This is the Fifth Amendment to the Master Contract between the County of Santa Clara (COUNTY) and City of Milpitas (CONTRACTOR) entered into on July 1, 2011 to provide Senior Nutrition Services.

On May 19, 2015, the Board of Supervisors approved the Delegation of Authority to the Social Services Agency (SSA) Director, or designee, to negotiate, execute, amend, and terminate this Contract. The Delegation of Authority for this Contract shall expire on June 30, 2016.

Background

The purpose of this Amendment is to extend the term for an additional one (1) year and augment funds by $170,307.00. The additional funding is included in the revised Maximum Financial Obligation. The attached Budget Summary reflects the services and fiscal budget for the extended term.

This Contract is amended, effective July 1, 2015, as follows:

A. Under Exhibit B, **PROGRAM PROVISIONS** on page 22, **TERM OF CONTRACT** is revised to read: This contract commences on July 1, 2011 and expires on June 30, 2016, unless terminated earlier or otherwise amended.

B. Under Exhibit B, **PROGRAM PROVISIONS** on page 22, **MAXIMUM FINANCIAL OBLIGATION** is revised to read: CONTRACTOR is entitled to reimbursement for actual allowable expenditures subject to the provisions of this Contract not to exceed $173,489.00 in FY 2011-2012, not to exceed $164,407.00 in FY 2012-2013, not to exceed $172,334.00 in FY 2013-2014, not to exceed $170,998.00 in FY 2014-2015, and not to exceed $170,307.00 in FY 2015-2016.

C. Under Article I – General Terms, on page 3, add:

10. <u>CONTRACT EXECUTION</u>

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County. If Contractor provides an electronic copy of a signed contract to the County, Contractor shall provide the original signed contract to the County within 10 days of providing the electronic copy to the County in order to enforce its rights under the contract.

D. Under Exhibit C, **PROGRAM PLAN AND REQUIREMENTS** on page 27, add:

15. <u>CARE ACCESS ERROR RATE REQUIREMENT</u>

Federal regulations pursuant to Title III of the Older Americans Act of 1965 (OAA) establish procedures for allocating money to states for various senior services. States have established

allocation mechanisms to award monies to their Area Agencies on Aging (AAA). These AAAs in turn, award monies via contracts or grants to carry out the mission of the OAA.

Sourcewise, the County of Santa Clara's designated AAA, allocates money for the provision of the Senior Nutrition Program by reimbursing the County based on the number of meals served to seniors per month. This data is tracked through Sourcewise's Care Access Database. When there is a discrepancy between the paper total (signatures of the SNP Participants) and scanner total (scanned barcodes of the SNP Participants), an error rate arises. Currently, if the total combined error rate of all Senior Nutrition Meal Sites exceeds 5%, the County will not be reimbursed by Sourcewise. Therefore, CONTRACTOR's data that is imported into Sourcewise's Care Access Database must **not** exceed an error rate of 5%.

If CONTRACTOR's imported data exceeds an error rate of 5%, COUNTY will withhold a percentage of the CONTRACTOR's invoice equivalent to the percentage of the error rate exceeding the 5% threshold. For example, if CONTRACTOR has an error rate of 23%, COUNTY will withhold 18% (23% - 5%) of CONTRACTOR's invoice for that month.

Should Sourcewise decide to reimburse the County regardless of the combined error rate of all Senior Nutrition Meal Sites, then the County will not withhold any percentage of CONTRACTOR's invoice regardless of CONTRACTOR's error rate for that month.

E. Under Exhibit C, **PROGRAM PLAN AND REQUIREMENTS** on page 27, add:

16. <u>SERVING DAYS REQUIREMENT</u>

Withholding circumstances out of CONTRACTOR's control, CONTRACTOR must open their Nutrition Site(s) for the number of service days specified in Exhibit D-16: Budget Summary. Should CONTRACTOR close their Nutrition Site(s) due to unforeseen circumstances, CONTRACTOR will notify COUNTY immediately and work collaboratively with COUNTY to reschedule the day(s) that the Nutrition Site(s) was closed.

Should CONTRACTOR close their Nutrition Site(s) due to foreseen circumstances and not be able to reschedule the day(s), CONTRACTOR will not be reimbursed for the number of meals allocated to the serving day(s) that the Nutrition Site(s) was closed.

F. Add Exhibit D-16, **BUDGET SUMMARY & PAYMENT PROVISIONS** for FY 2015-2016 which is attached hereto and incorporated herein by this reference.

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All other terms and conditions of the agreement remain in full force and effect.

In the event of a conflict between the original Contract and this Amendment, Amendment controls.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR hereby agree to the terms of this Contract.

APPROVED FOR COUNTY

_____
Robert Menicocci, Acting Director
Social Services Agency
Date: _____

_____
John P. Mills
Deputy County Executive
Date: _____

APPROVED AS TO FORM AND LEGALITY

_____
Kristin Baker
Deputy County Counsel
Date: _____

APPROVED FOR CONTRACTOR

_____
Thomas Williams, City Manager
City of Milpitas
Date: _____

Santa Clara County- Social Services Agency
Senior Nutrition Program
City of Milpitas
Budget - FY 2015/2016

Asian (2 days)	105	*	96	10,080
Bateman (3 days)	73	*	154	11,242
Additional Bateman (2 days a week)	10	*	96	960
				22,282
Service Days M-F	Daily		Total	Annual

1. PERSONNEL						
a. Site Manager			$ 29,556			
b. Kitchen Aide			$ 15,361			
c. Janitor			$ 6,080		**$**	**50,996**
2. OPERATION COSTS						
Overhead	Flat Rate		$ 2,388		**$**	**2,388**
3. VARIANCE CATEGORIES						
Insurance/Worker Comp.	n/a		$ -			
Fiscal	n/a		$ -			
Staff Mileage	@ $0.555 mi.		$ 100			
Equipment & Repair			$ 200			
Non-Food Items	@ $.262 meal		$ 5,838		**$**	**6,138**
4. FOOD COSTS						
New Orient @ 4.80 & .23 milk	$ 5.030	*	10,080	50,702		
Bateman @ 4.924	$ 4.924	*	12,202	60,083	**$**	**110,785**
	Food Cost		Annual Meals			
5. TOTAL BUDGET					**$**	**170,307**
6. CONTRACT AMOUNT					**$**	**170,307**
				City of Milpitas contribution (50%)	$	85,153

*Fifty percent of participant contributions retained by Milpitas

Personnel Detail

	Hours	Days	Hourly Rate	Earnings	Fringe	Vacation	Sick Leave	Medical	Total Costs
Site Manager	6.00	260	14.16	22,090	2,396	850	1,020	3,201	29,556
Kitchen Aide	4.00	260	9.80	10,192	1,105	392	470	3,201	15,361
Janitor	2.00	260	9.80	5,096	553	196	235	-	6,080
Total Personnel Costs				**37,378**	**4,054**	**1,438**	**1,725**	**6,402**	**50,996**

Formula

Days	249 + 11 holidays	Vacation	Hours x 10 x Hourly Rate
Earnings	Hours x Days x Hourly Rate	Sick Leave	Hours x 12 x Hourly Rate
Fringe	10% of (Earnings+Vacation+Sick Leave)		

Payment Provisions

CONTRACTOR understands and agrees that this Contract is a **cost-reimbursement** contract. All references to "you" in this Attachment refer to CONTRACTOR.

You can only be reimbursed for expenses paid out in a report month. The Line Item allocations represent the **maximum annual amount** available for your budget. **Once the contracted line item allocations balances have been used, you cannot continue to claim a current monthly expenditure reimbursement for these items**. You may want to note on the bottom of the monthly expenditure report if you have a continuing expense over and above a zero balance line item or you may want to keep a separate record of your actual expenditures. This may help if you request a line item transfer or may help justify a change in your budget during the annual budget preparation meetings. Please see **LINE ITEM CHANGES** (See Below)** for more information.

These Line Item Definitions are part of the contract standards that were recommended by the Nutrition Contract Standards Committee and approved by the Board of Supervisors on March 10, 1998. Please refer accounting questions to Senior Nutrition Program (SNP) Accounting Staff and budget questions to the SNP Management Analyst.

In certain circumstances, you will be reimbursed for all budget line items as an all inclusive per meal cost for each meal consumed during the term of the Agreement.

1. PERSONNEL - Salaries and personnel expenses paid out during the report month should be claimed for all Nutrition employees that work and are authorized by your contract. Employee positions not filled cannot be claimed. Changes in personnel or circumstances that require a substitute should be reported to your assigned Dietitian **prior to filling the position,** explaining the reason for the change. Please indicate if this is a permanent or temporary change.

Fringe – This covers employer paid payroll taxes: FICA (Social Security and Medicare) and SDI (both Federal and State). It is currently budgeted at 10% of the budgeted salary including vacation and sick. You can report the actual amount up to the budgeted amount. At fiscal year end, you may request to transfer any extra budget amount to other line items.

Sick Leave – This covers sick leave paid to the SNP budgeted staff. The County budgets 12 paid sick leave days (prorated to the number of hours the employee works and serving days). Unused sick leave amount **cannot** be paid off to the staff member, but can be transferred to other line items. Unused sick leave amount which is not transferred to other line items will be returned to the County general fund. County does not accrue any unused sick leave for the SNP staff. County can only reimburse the actual amount taken, not the allocated amount.

Medical – This covers health insurance costs. You can report the actual amount up to the budgeted amount for each budgeted staff. It does not cover spouse or dependents. It is for medical only and does not include dental or vision. If receiving County Kaiser, allocation will be deducted in Line Item 6 "Other Deductible". If your agency does not provide health insurance, this amount can be distributed to the budgeted staff as allowance for purchasing his/her own health plan. If this amount is not claimed or distributed for medical insurance, it **cannot** be transferred to another line item.

2. OPERATION COSTS

Usage Costs - This allowance is for rent or lease costs incurred and paid by your agency. ***You are reimbursed for rent or lease payments allocated to the Nutrition Program at the current per meal rate ($0.486) for monthly meals served up to your budgeted allocation.*** If you share building or housing costs with other programs you must be able to verify and document how you pro-rate the amount charged to the Nutrition Program. Some sites do not pay rent or lease and are not budgeted for this line item.

Overhead - This category is an allowance for utilities (heating/electricity, telephone, janitorial services, and office supplies, printing, water softener or pest control) needed to support your nutrition site, incurred and paid by your agency. ***You are reimbursed at the current per meal overhead rate ($0.183) for monthly meals served up to your budgeted allocation.*** If the costs are shared with other programs, you must be able to verify how you pro-rate the amount charged to the Nutrition Program. Some sites are not budgeted for this line item.

3. VARIANCE CATEGORIES

Insurance/Worker's Compensation - This is an allowance for insurance or worker's compensation insurance payments that are actually paid out in the report month. You are only reimbursed for actual payments made. If your agency pays for other programs, only the pro-rated amount paid for the Nutrition Program Employees is allowable as an expense.

Fiscal - This allowance is for bookkeeping, accounting and payment for the annual audit. If you share bookkeeping and accounting expenses with other non- nutrition programs, only the portion allocated and paid out for the nutrition program is allowable for reimbursement. You must document and be able to verify how you pro-rate your expenses towards the Nutrition Program. Documentation of the expense and when the expense was incurred must be available to the County when requested.

Staff Mileage - This allowance is for nutrition employees who are required to attend Nutrition Staff Meetings or Trainings. Mileage to and from meetings is reimbursed at the County rate **($0.56 per mile)**. The amount allocated is determined by your yearly usage.

Equipment and Repair - This allowance is for small equipment and repair expenses.

* The **Nutrition Equipment Committee** reviews requests for other equipment that exceed your budgeted amount. The amount of funds available through the Equipment Committee varies each year. Check with your Dietitian if you wish to submit a request.

Non-Food Items - This allowance will cover the cost of paper products, utensils, serving dishes, cleaning supplies and laundry.

4. FOOD COSTS - This is the allowance for food expenses. Based on whether you are a cook-on-site or a catered meal site, you may claim for raw food costs, restaurant catered meals or vendor catered meals. Some sites will have a combination of raw and catered food expenses.

5. TOTAL BUDGET - This is the total program budget amount before any deductibles.

6. OTHER DEDUCTIBLE - This line item will show items (**if applicable**) that are deducted from the budget. This may include the following items, but will not apply to all budgets:

County Outreach Transportation
County Kaiser
Contractor Contribution Amount
City Grants or Contributions
Community Development Block Grants (CDBG)
Other Income Contributions

7. CONTRACT AMOUNT - Final contracted budget for the site.

**** LINE ITEM CHANGES** - May be requested in writing by CONTRACTOR'S Agency Representative. **Submit line item requests during the year when you first become aware of a need to transfer funds between line items. Do not assume that line item transfers will be authorized**. Final line item transfer requests for fiscal year ending June 30 are to be submitted no later than the first Friday of June. The SNP Program Manager and the Nutrition Services Manager will review these requests for approval or disapproval.

Any line item request must have funds available in your budget and be accompanied by an explanation of the reason for the request. Additional verification may be requested. The SNP Program Manager has final approval or disapproval authority for any line item change request.

Brown & Brown Insurance Services of CA, Inc. • 2401 E. Katella Ave., Suite 550, Anaheim, CA 92806 • (800) 228-7975

Insurance Proposal Submitted For:

City of Milpitas

Excess Workers' Compensation Insurance Proposal

Policy Term:

07/01/2015 - 07/01/2016

Submitted by:
Mike Bush
Senior Vice President

This proposal is for illustration purposes only. Please refer to the policy for actual terms/conditions.
Coverage cannot be considered bound until a binder has been received.

Thank you for inviting us to develop and present a Risk Solution Program to you. We welcome the opportunity to become involved with your company. We have worked to identify your needs and concerns, and to develop a program for your insurance. Brown & Brown, Inc. is the seventh largest independent agency organization nationally.[1] The company provides a variety of insurance products and services to corporate, institutional, professional and individual clients. Headquartered in Daytona Beach and Tampa, Florida, Brown & Brown is publicly traded on the New York Stock Exchange (BRO) and has been included in Forbes' list of the "200 Best Small Companies in America". The company handles clients' premiums in excess of $10 Billion annually and has approximately 6,500 employees.

While size is not the sole criteria for choosing an insurance agent, it does enable us to offer our clients clout in the marketplace and unmatched service capability.

Please feel free to visit our website at www.bbinsurance.com.

This brief description of insurance coverage is being provided as an accommodation only and is not intended to cover or describe all policy terms. In the event of difference, the policy will prevail. For more complete information on the scope and limits of coverage please refer to the policy document.

[1] As listed in Business Insurance magazine, July 18, 2011 edition

Account Service Team

No matter how comprehensive or price competitive your insurance program is, it is still people who must service it to insure that coverage will respond when needed.

Mike Bush

Account Executive

Phone: (714)221-1853
Fax: (714) 221-4196
mbush@bbsocal.com

Mike Bush is responsible for overseeing all aspects of your program.

Peggy Coleman

Account Manager

Phone: (714)221-1883
Fax: (714) 221-4196
pcoleman@bbsocal.com

Peggy Coleman will assist with the daily servicing of your account, including endorsements, certificate requests, client services, program design, accounting, quality assurance and market relationships.

Judith Villalobos

Account Manager

Phone: (714)221-1828
Fax: (714) 221-4128
jvillalobos@bbsocal.com

Feel free to contact anyone on this list if you have questions or concerns regarding your insurance policy.

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IMPORTANT NOTICE
DISCLAIMER

Disclaimer: This proposal presented is based upon the exposures to loss made known to the agency. Any changes in these exposures (i.e. new operations, new products, additional state of hire, etc.) need to be promptly reported to our agency in order that proper coverage(s) may be put in place.

The proposal contains only a general description of the coverage(s) and does not constitute a policy / contract. This brief description of insurance coverage is being provided as an accommodation only and is not intended to cover or describe all policy terms. For more complete information on the scope and limits or coverage, please refer to the policy document.

The proposal includes, but is not limited to, the terms, exclusions and conditions listed. For complete policy information, including exclusions, limitations and conditions, refer to the policy document.

☐ Non-Admitted Carrier

Taxes: $N/A

Fees: $N/A

Minimum Earned Premium: N/A %

Higher Limits may be available upon request ▼ Premiums may be subject to audit
Premiums include Terrorism Coverage

Please read your policy for specific details.

A.M. Best Rating of Proposed Carriers

Policy Type	Carrier	Rating
Workers Compensation	Safety National Casualty Corporation	A+; XIII

The information obtained from A.M. Best's Rating is not in any way a warranty or guaranty by Brown & Brown, Inc. of the financial stability of the insurer and this information is current only as of the date of publication.

General Rating:

These rating classifications reflect BEST's opinion of the relative position of each company in comparison with others, based upon averages within the Property-Casualty insurance industry. They are reflective of overall company services and standing within the industry.

A++, A+	Superior	B++, B+	Good	C++, C+	Marginal
A, A-	Excellent	B, B-	Fair	C, C-	Weak

Financial Size Category:

The financial Size Category is an indication of the size of an Insurer and is based on reported Policyholders' surplus plus conditional or Technical Reserve Funds, such as mandatory securities valuation reserve, other investment and operating contingency funds and/or miscellaneous voluntary reserves in liabilities.

Financial Size Category (in Thousands)			
Class I	Up to	$1,000	
Class II	$1,000	to	$2,000
Class III	$2,000	to	$5,000
Class IV	$5,000	to	$10,000
Class V	$10,000	to	$25,000
Class VI	$25,000	to	$50,000
Class VII	$50,000	to	$100,000
Class VIII	$100,000	to	$250,000
Class IX	$250,000	to	$500,000
Class X	$500,000	to	$750,000
Class XI	$750,000	to	$1,000,000
Class XII	$1,000,000	to	$1,250,000
Class XIII	$1,250,000	to	$1,500,000
Class XIV	$1,500,000	to	$1,750,000
Class XV	$1,750,000	to	$2,000,000

This information has been provided to you so that consideration is given to the financial condition of our proposed carriers. The financial information disclosed is the most recent available to Brown & Brown Insurance Services of CA, Inc. Brown & Brown does not guarantee financial condition of the insurers listed above.

Claims Reporting Guidelines

Make Brown & Brown, Inc. aware of any and all incidents *immediately* after they occur, whether it be an auto accident, a theft, slip & fall, even a minor incident that appears will have no future activity. Do not wait for a police report.

Gather as much concrete information as possible. For example, police reports, company incident reports, conversation logs, medicals and pictures - anything that may assist in the handling of your claim. Send this information either by mail, e-mail or fax to:

Brown & Brown Insurance Services of CA, Inc.
2401 E. Katella., Suite 550,
Anaheim, CA 92806
(714)221-1883
(714) 221-4196 fax
pcoleman@bbsocal.com

If you have any questions or incur any problems, please call our office and we will be glad to assist in any way we can.

What is an Audit?

Policies which use fluctuating values as the exposure basis, i.e.: payroll or sales are subject to an audit. The company may visit your business to examine your records or ask you to complete a voluntary "mail in" audit. If at the time of the audit your exposures are different from what you estimated at the time your policy was written, you will receive a return premium credit or an additional premium billing.

If you subcontract any work, it is essential that the subcontractor provide you with a Certificate of Insurance indicating that insurance coverage is in place for General Liability, Workers Compensation, and Automobile Liability. If at the time of audit you do not have evidence of insurance from your subcontractors, you will be charged an additional premium for the payroll of the subcontractor on your policies. We recommend you require subcontractors to carry insurance via a contract.

Audits that generate an additional premium are due upon receipt. It is important that you review audits as soon as you receive them and advise us of any discrepancies in the exposures immediately so that we may inform the insurance carrier. If payment of the audit is not received by the insurance company on a timely basis, your coverage may be canceled and could adversely affect the future placement of insurance coverage.

We recommend that you review the actual exposures as compared to your estimated exposures quarterly and advise us of any significant variance.

Important Information

Compensation: In addition to the commissions or fees received by us for assistance with the placement, servicing, claims handling, or renewal of your insurance coverages, other parties, such as excess and surplus lines brokers, wholesale brokers, reinsurance intermediaries, underwriting managers and similar parties, some of which may be owned in whole or in part by Brown & Brown, Inc., may also receive compensation for their role in providing insurance products or services to you pursuant to their separate contracts with insurance or reinsurance carriers. That compensation is derived from your premium payments. Additionally, it is possible that we, or our corporate parents or affiliates, may receive contingent payments or allowances from insurers based on factors which are not client-specific, such as the performance and/or size of an overall book of business produced with an insurer. We generally do not know if such a contingent payment will be made by a particular insurer, or the amount of any such contingent payments, until the underwriting year is closed. That compensation is partially derived from your premium dollars, after being combined (or "pooled") with the premium dollars of other insureds that have purchased similar types of coverage. We may also receive invitations to programs sponsored and paid for by insurance carriers to inform brokers regarding their products and services, including possible participation in company-sponsored events such as trips, seminars, and advisory council meetings, based upon the total volume of business placed with the carrier you select. We may, on occasion, receive loans or credit from insurance companies. Additionally, in the ordinary course of our business, we may receive and retain interest on premiums you pay from the date we receive them until the date the premiums are remitted to the insurance company or intermediary. In the event that we assist with placement and other details of arranging for the financing of your insurance premium, we may also receive a fee from the premium finance company.

Questions and Information Requests: Should you have any questions, or require additional information, please contact this office at 1-800-228-7975 or, if you prefer, submit your question or request online at www.bbsocal.com

This proposal contains only a general description of the coverage(s) and does not constitute a policy/ contract. For complete policy information, including exclusions, limitations, and conditions, refer to the policy document. This proposal is based upon the exposures to loss made known to the Agency. Any changes in these exposures (i.e., new operations, new products, additional states of hire, etc.) need to be promptly reported to us in order that proper coverage(s) may be put into place.

Wholesale Broker/Managing General Agent: Loveland & Smart

This intermediary ☐ is ☒ is not owned in whole or part by Brown & Brown, Inc., the parent company of Brown & Brown Insurance Services of California, Inc. Brown & Brown entities operate independently and are not required to utilize other companies owned by Brown & Brown, Inc., but routinely do so. In addition to providing access to the insurance company, the Wholesale Insurance Broker/Managing General Agent may provide additional services including, but not limited to: underwriting, loss control, risk placement, coverage review, claims coordination with insurance company; and policy issuance. Compensation paid for those services may be up to 15% of the premium you pay for coverage, and any compensation paid for those services is derived from your premium payment. The Fee, if any, for the Wholesale Insurance Broker's/Managing General Agent's services above is $0.00.

Brown & Brown Insurance Services of CA, Inc. • 2401 E. Katella Ave., Suite 550, Anaheim, CA 92806 • (800) 228-7975

Named Insureds

The following are named insureds on your policies:

City of Milpitas
(Discuss any other names as part of Named Insured)

Please verify the accuracy of each name on this list and update if needed.

Brown & Brown Insurance Services of CA, Inc. • 2401 E. Katella Ave., Suite 550, Anaheim, CA 92806 • (800) 228-7975

Workers Compensation

CITY OF MILPITAS

EXCESS WORKERS' COMPENSATION

7-1-15 to 7-1-16

	Renewal 2014 / 2015	Current 2015 / 2016
COMPANY:	Safety National Casualty Corporation	Safety National Casualty Corporation
2014 BEST'S RATING:	A+: XII; Admitted	A+: XIII; Admitted
LIMIT:	$20,000,000 WC $1,000,000 EL Per Occurrence/Aggregate	$20,000,000 WC $1,000,000 EL Per Occurrence/Aggregate
SELF-INSURED RETENTION (SIR):	$750,000 $1,000,000 Police and Fire	$750,000 $1,000,000 Police and Fire
PAYROLL:	$35,689,916	$37,325,242 (4.58% Increase)
RATE:	.3555	.3555
DEPOSIT PREMIUM:	$126,878	*$132,691
MINIMUM PREMIUM	$114,190	*$119,422

*Note: No State of California Insurance Guarantee Association (CIGA) surcharge will apply for 2015/2016.

This proposal is for illustration purposes only. Please refer to the policy for actual terms/conditions.
Coverage cannot be considered bound until a binder has been received.

NOTES / OPTIONS:

1. The following options are presented for your consideration:

   A. See Additional Market Options

2. Using this year's payroll ($37,325,242) and last year's rates (.3555), the premium would have been $132,691. This year's rate and this year's payroll produces a premium of $132,691 (for a $20,000,000 Limit) (The payroll increase (City) of 4.58% accounts for the premium increase of approximately $5,813.

3. The California Excess Workers' Compensation marketplace, is not showing the increases in rate which have been seen in 2014/2015 & prior for primary workers compensation.

4. Your rates for the current and past 12 years have been as follows:

2015/2016	.3555	$20,000,000 Limit (0% Rate Increase)
2014 / 2015	.3555	$20,000,000 Limit
2013 / 2014	.33858	$20,000,000 Limit
2012 / 2013	.2954	$20,000,000 Limit
2011/ 2012	.2710	$20,000,000 Limit
2010 / 2011	.2710	$20,000,000 Limit
2009 / 2010	.2710	$20,000,000 Limit
2008 / 2009	.2960	$20,000,000 Limit
2007 / 2008	.3939	$5,000,000 Limit
2006 / 2007	.4113	$5,000,000 Limit
2005 / 2006	.4244	$1,000,000 Limit
2004 / 2005	.4610	$1,000,000 Limit
2003 / 2004	.4424	$1,000,000 Limit

6. The above deposit premiums are subject to an annual audit to determine the final premium.

Brown & Brown Insurance Services of CA, Inc. • 2401 E. Katella Ave., Suite 550, Anaheim, CA 92806 • (800) 228-7975

PREMIUM SUMMARY

Name: City of Milpitas

Excess Workers' Compensation See attached Market Options

Premium includes Terrorism

PREMIUM PAYMENT OPTIONS

Pay in Full

This proposal is for illustration purposes only. Please refer to the policy for actual terms/conditions.
Coverage cannot be considered bound until a binder has been received.

Brown & Brown Insurance Services of CA, Inc. • 2401 E. Katella Ave., Suite 550, Anaheim, CA 92806 • (800) 228-7975

Brown & Brown Insurance Services of California Spectrum Service

Brown & Brown Insurance Services of California is happy to offer all clients a full suite of service not only for your business but also for your personal insurance needs. Spectrum Service provides protection in the following areas:

Yes ☐ **Employee Benefits** ☐ No

Medical, dental, vision, life and disability for your employees

Yes ☐ **Personal** ☐ No

Homeowners, auto, collectibles and more

Yes ☐ **Contingency Planning** ☐ No

Life/Disability/Long Term Care

Yes ☐ **Business Perpetuation** ☐ No

Buy-Sell/Key Man

Yes ☐ **Financial Planning** ☐ No

Estate/Asset Protection • Retirement/Investment Planning

This proposal is for illustration purposes only. Please refer to the policy for actual terms/conditions.
Coverage cannot be considered bound until a binder has been received.

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name: Communication Academy Corporation **Attention: Jackson Chow**	
Address: 7337 Bollinger Road, #E **Cupertino, CA 95014**	**Tax ID Number: -**
Phone Number: (408) 777-8876	

This Agreement for Recreation Services is made by and between the City of Milpitas; a municipal corporation of the State of California ("City") and **Communication Academy Corporation**, an individual or a California corporation ("Contractor") and this Agreement will be in effect from **June 8, 2015** to **August 31, 2015**, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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.

2. Contractor Not Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Educational Writing, Speaking and Math Classes** **(see attached scope of service fully incorporated herein)**

   A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.

   B. Contractor agrees to contact Recreation Services three (3) days prior to the first class meeting to verify class enrollment. If fewer than the minimum students have enrolled for the course, class status will be determined by Contractor and the designated Recreation Services Representative.

4. Compensation. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of terms as herein indicated:

   Payment Rate**: **70** % of receipts (resident rate only).

   A. Contractor shall be compensated based on enrollment totals at the end of the session. Recreation Services is not responsible for compensating Contractors participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.

   # of class meetings **5**
   Minimum Participants **4**

Maximum Participants **8**

B. Should Contractor modify dates or times, or is tardy to a class more than two (2) times in a given session, resulting in changes to the schedule as listed in the Activity Guide, Contractor's final compensation shall be reduced by 10%.

C. In the event of a class cancellation by Contractor resulting in a make-up class, Contractor's payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up class.

D. Should Recreation Services be the cause of any class cancellation (i.e., scheduling conflict of facility or lack of building accessibility), Contractor shall be compensated for missed or re-scheduled class(es).

E. In the case that the class does not reach the stated minimum prior to the first class meeting and the class has not been previously canceled, the Contractor agrees that he/she will attend the first class meeting without compensation. If, after the first class meeting the stated minimum enrollment is still not reached, Recreation Services may, at its discretion cancel the class, or if said class is not canceled, Contractor may elect to cancel the class or conduct the class with a reduced class minimum. In the later case, compensation will be adjusted by Recreation Services.

F. Payment is for professional services and not as an hourly wage. City will not withhold from such payment any amount for federal or state income taxes. All instructors must complete a W-9 form.

5. Termination. City may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of City, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, City at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

6. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this Agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.

7. Insurance. Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, Contractor and any employees thereof will not be covered under the City's Worker's Compensation Fund. City will also not obtain unemployment insurance for Contractor. City's insurer will not defend or pay claims brought against Contractor. Contractor understands that as an Independent Contractor, he/she is responsible for his/her own insurance and liability coverage. _____ Contractor initials.

8. Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

9. Special Risks or Circumstances. City reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

11. Permission. Contractor grants full permission to the City of Milpitas for use of his/her name and photographs, videos, motion pictures or recordings for any publicity and promotion purposes without obligation or liability to contractor.

12. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to first class. Independent Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Recreation Services representative. The Independent Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.

13. Entire Agreement. This Agreement and the incorporated attachments represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

14. Indemnification. Contractor shall defend and indemnify City and its officers, agents, employees and volunteers (collectively, "City Parties") against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens, or other liens, labor disputes, losses, damages, expenses, charges or costs, of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to this Agreement or Contractor's activities pursuant to this Agreement, including without limitation, Claims caused by the concurrent negligent act, error, or omission, whether active or passive, of City Parties. Contractor shall have no obligation to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties. For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 2782.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

15. Governing Law and Venue. The laws of the State of California shall govern this Agreement. In the event that suit shall be brought by any of the parties, the parties agree venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United State District Court, Northern District of California, San Jose, California.

16. Compliance with Applicable Laws. Contractor shall comply with all laws applicable to the performance of the work hereunder.

17. Noncompliance and Equal Opportunity. Contractor 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 participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

18. No Oral Modification. This Agreement may not be altered or amended except by a written document executed by the parties hereto.

19. Severability. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable in any respect under any statute, rule or law of any state or of the United States of America, such unenforceability will not affect any other provision of this Agreement, but, with respect only to the jurisdiction holding the provision to be unenforceable, this Agreement will then be construed as if such unenforceable provision or provisions had never been contained herein.

20. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

CONTRACTOR:

_____ Date:_____

[Communication Academy (Jackson Chow)]

CITY OF MILPITAS, CALIFORNIA

By:_____ Date:_____

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

Instructor

Communication Academy
Attention: Jackson Chow
7337 Bollinger Road #E
Cupertino CA 95014

Instructor ID:
SSN:
Home Phone:

Letter of Agreement

Contractor agrees to contact the Recreation Services three (3) working days prior to first class meeting to verify class enrollment. This agreement calls for contractor to teach the following class(es):

Activity Number - Name/Location	Season	Term	Date and Time	Primary Instructor	Instructor Role	# Weeks	# Days	# Gen. Hrs.	# Up-front Prep.Hrs.	# Ongoing Prep.Hrs.
2124 - Pre-Public Speaking Club: Confident Self Camp Cracolice Game Room	2015 Summer		Mon Aug 3-Fri Aug 7 1:00 PM-3:30 PM	Yes		1	5	12.50	0.00	0.00
General Rate: 70.0000% of key fees										
2125 - Pre-Public Speaking Club: Confident Self Camp Cracolice Game Room	2015 Summer		Mon Jul 27-Fri Jul 31 1:00 PM-3:30 PM	Yes		1	5	12.50	0.00	0.00
General Rate: 70.0000% of key fees										
2126 - Public Speaking Club: Creative Interpretation Camp Cracolice Game Room	2015 Summer		Mon Jul 20-Fri Jul 24 1:00 PM-3:30 PM	Yes		1	5	12.50	0.00	0.00
General Rate: 70.0000% of key fees										
2127 - Math Olympiad Cracolice Game Room	2015 Summer		Mon Aug 3-Fri Aug 7 9:30 AM-12:00 PM	Yes		0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees										
2128 - Math Olympiad Cracolice Game Room	2015 Summer		Mon Aug 3-Fri Aug 7 9:30 AM-12:00 PM	Yes		1	5	12.50	0.00	0.00
General Rate: 70.0000% of key fees										
2129 - Math Olympiad Cracolice Game Room	2015 Summer		Mon Jul 13-Fri Jul 17 1:00 PM-3:30 PM	Yes		1	5	12.50	0.00	0.00
General Rate: 70.0000% of key fees										
2130 - Math Olympiad Cracolice Game Room	2015 Summer		Mon Jun 15-Fri Jun 19 9:30 AM-12:00 PM	Yes		1	5	12.50	0.00	0.00
General Rate: 70.0000% of key fees										

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

2131 - Academic Writing: Journalism Camp Cracolice Game Room	2015 Summer	Mon Jul 27-Fri Jul 31 9:30 AM-12:00 PM	Yes	1	5	12.50	0.00	0.00
General Rate: 70.0000% of key fees								
2132 - Academic Writing: Journalism Camp Cracolice Game Room	2015 Summer	Mon Jul 20-Fri Jul 24 9:30 AM-12:00 PM	Yes	1	5	12.50	0.00	0.00
General Rate: 70.0000% of key fees								
2133 - Academic Reading: Book Club Camp Cracolice Game Room	2015 Summer	Mon Jul 13-Fri Jul 17 9:30 AM-12:00 PM	Yes	1	5	12.50	0.00	0.00
General Rate: 70.0000% of key fees								
2134 - Debate/Critical Thinking: Student Congress Camp Cracolice Game Room	2015 Summer	Mon Jun 15-Fri Jun 19 1:00 PM-3:30 PM	Yes	1	5	12.50	0.00	0.00
General Rate: 70.0000% of key fees								
2135 - Pre-Public Speaking & Math Olympiad Camp Cracolice Game Room	2015 Summer	Mon Aug 3-Fri Aug 7 9:30 AM-3:30 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 70.0000% of key fees								
2136 - Pre-Public Speaking & Academic Writing Camp Cracolice Game Room	2015 Summer	Mon Jul 27-Fri Jul 31 9:30 AM-3:30 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 70.0000% of key fees								
2137 - Academic Reading & Math Olympiad Camp Cracolice Game Room	2015 Summer	Mon Jul 13-Fri Jul 17 9:30 AM-3:30 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 70.0000% of key fees								
2138 - Debate & Math Olympiad Camp Cracolice Game Room	2015 Summer	Mon Jun 15-Fri Jun 19 9:30 AM-3:30 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 70.0000% of key fees								
2139 - Public Speaking & Academic Writing Camp Cracolice Game Room	2015 Summer	Mon Jul 20-Fri Jul 24 9:30 AM-3:30 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 70.0000% of key fees								

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

City of Milpitas

455 E. Calaveras Blvd., Milpitas CA 95035

Purchase Order Requisition

Page ___ of ___

Vendor Number	Recommended Supplier / Contact / Street Address	Reason For Recommendation	Ship To	Special Instructions	Department Head Approvals	Approval Date
15729	Communication Academy Attention: Jackson Chow 7337 Bollinger Road, #E		City of Milpitas Dale Flunoy 457 E. Calaveras Blvd. Milpitas, CA 95035		R Brentzen	10/4/15
	City, State & Zip Code Cupertino, CA 95014	Telephone 408-777-8876	Fax #			
Check box if attachments are to be sent with PO ☐	Check box to send PO to vendor ☐	Date Required:	Requested by: Dale Flunoy Ext. 3228	Date Requested:	Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project	

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	1	Class payments	$20,000.00	$20,000.00	100-170-4237
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	

Justification Or Intended Use Of Goods or Services

Sub Total		$20,000.00
Tax		$0.00
Freight		$0.00
Total		$20,000.00

Requestor Check-off list:

Agreement Dated: _____ ✔ not applicable

Certificate of Insurance Expiration Date: _____ ✔ not applicable

City Council Approved on (for purchases over $20,000): _____* ☐ not applicable

Competitive Bidding - 3 quotes received ☐ Yes** ☐ No ✔ not applicable

Sole Source Justification form (attach) ✔ not applicable

Emergency Procurement form (attach) ✔ not applicable

(*attach Agenda & Minutes) (**attach quotes)

For Accounting Use Only

Signature Approval _____ Commodity Code: _____

CIP Budget Check _____ Ship to Code: _____

Acct. Code Check _____ PO Entered on: _____

Agreement Dated _____ PO # _____

Insurance Expires _____ Batch # _____

City Council _____ Entered by _____

Depreciable? If yes, use PO# EQ_____

Multiple Account Use PO# MA _____

Forward Original to Accounting Services, Save a copy for your records

Revised 10/6/10

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name: Mad Doug, Inc, aka Mad Science of the Bay Area 41324 CHRISTY STREET	
Address: ~~**5409 Central Avenue, Suite 6 Newark, CA 94560**~~ FREMONT 94538	**Tax ID Number:** 94 - 3316247
Phone Number: (877) 390-5437	

This Agreement for Recreation Services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and **Mad Doug, Inc.**, an individual or a California corporation ("Contractor") and this Agreement will be in effect from **June 1, 2015** to **September 30, 2015**, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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.

2. Contractor Not Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Various Science Camps and Classes** **(see attached scope of service fully incorporated herein)**

   A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.

   B. Contractor agrees to contact Recreation Services three (3) days prior to the first class meeting to verify class enrollment. If fewer than the minimum students have enrolled for the course, class status will be determined by Contractor and the designated Recreation Services Representative.

4. Compensation. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of terms as herein indicated:

   Payment Rate**: **70** % of receipts (resident rate only).

   A. Contractor shall be compensated based on enrollment totals at the end of the session. Recreation Services is not responsible for compensating Contractors participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.

   # of class meetings **5**
   Minimum Participants **10**
   Maximum Participants **20**

B. Should Contractor modify dates or times, or is tardy to a class more than two (2) times in a given session, resulting in changes to the schedule as listed in the Activity Guide, Contractor's final compensation shall be reduced by 10%.

C. In the event of a class cancellation by Contractor resulting in a make-up class, Contractor's payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up class.

D. Should Recreation Services be the cause of any class cancellation (i.e., scheduling conflict of facility or lack of building accessibility), Contractor shall be compensated for missed or re-scheduled class(es).

E. In the case that the class does not reach the stated minimum prior to the first class meeting and the class has not been previously canceled, the Contractor agrees that he/she will attend the first class meeting without compensation. If, after the first class meeting the stated minimum enrollment is still not reached, Recreation Services may, at its discretion cancel the class, or if said class is not canceled, Contractor may elect to cancel the class or conduct the class with a reduced class minimum. In the later case, compensation will be adjusted by Recreation Services.

F. Payment is for professional services and not as an hourly wage. City will not withhold from such payment any amount for federal or state income taxes. All instructors must complete a W-9 form.

5. Termination. City may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of City, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, City at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

6. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this Agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.

7. Insurance. Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, Contractor and any employees thereof will not be covered under the City's Worker's Compensation Fund. City will also not obtain unemployment insurance for Contractor. City's insurer will not defend or pay claims brought against Contractor. Contractor understands that as an Independent Contractor, he/she is responsible for his/her own insurance and liability coverage. SWC Contractor initials.

8. Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

9. Special Risks or Circumstances. City reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

11. Permission. Contractor grants full permission to the City of Milpitas for use of his/her name and photographs, videos, motion pictures or recordings for any publicity and promotion purposes without obligation or liability to contractor.

12. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to first class. Independent Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Recreation Services representative. The Independent Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.

13. Entire Agreement. This Agreement and the incorporated attachments represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

14. Indemnification. Contractor shall defend and indemnify City and its officers, agents, employees and volunteers (collectively, "City Parties") against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens, or other liens, labor disputes, losses, damages, expenses, charges or costs, of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to this Agreement or Contractor's activities pursuant to this Agreement, including without limitation, Claims caused by the concurrent negligent act, error, or omission, whether active or passive, of City Parties. Contractor shall have no obligation to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties. For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 2782.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

15. Governing Law and Venue. The laws of the State of California shall govern this Agreement. In the event that suit shall be brought by any of the parties, the parties agree venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United State District Court, Northern District of California, San Jose, California.

16. Compliance with Applicable Laws. Contractor shall comply with all laws applicable to the performance of the work hereunder.

17. Noncompliance and Equal Opportunity. Contractor 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 participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

18. No Oral Modification. This Agreement may not be altered or amended except by a written document

executed by the parties hereto.

19. Severability. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable in any respect under any statute, rule or law of any state or of the United States of America, such unenforceability will not affect any other provision of this Agreement, but, with respect only to the jurisdiction holding the provision to be unenforceable, this Agreement will then be construed as if such unenforceable provision or provisions had never been contained herein.

20. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

CONTRACTOR:

Susan W. Crawford, President Date: 6/2/15
[Mad Doug, Inc]

CITY OF MILPITAS, CALIFORNIA

By: Renee Lorentzen Date: 6/4/15

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

Instructor

Mad Science Of Bay Area
Susan Crawford
41324 Christy Street
Fremont CA 94538

Instructor ID:
SSN:
Home Phone: (408) 262-5437

Letter of Agreement

Contractor agrees to contact the Recreation Services three (3) working days prior to first class meeting to verify class enrollment. This agreement calls for contractor to teach the following class(es).

Activity Number - Name/Location	Season	Term	Date and Time	Primary Instructor	Instructor Role	# Weeks	# Days	# Gen. Hrs.	# Up-front Prep.Hrs.	# Ongoing Prep.Hrs.
2094 - Spy Academy Adobe Building	2015 Summer		Mon Jul 13-Fri Jul 17 9:00 AM-3:00 PM	Yes		1	5	30.00	0.00	0.00
General Rate: 70.0000% of key fees										
2095 - Wacky Robots & Widgets Adobe Building	2015 Summer		Mon Jul 20-Fri Jul 24 9:00 AM-3:00 PM	Yes		1	5	30.00	0.00	0.00
General Rate: 70.0000% of key fees										
2096 - Fizz-ical Phenomena & Che-mystery Adobe Building	2015 Summer		Mon Jul 6-Fri Jul 10 9:00 AM-3:00 PM	Yes		1	5	30.00	0.00	0.00
General Rate: 70.0000% of key fees										
2097 - Little Green Thumbs Adobe Building	2015 Summer		Mon Jun 29-Thu Jul 2 9:00 AM-12:00 PM	Yes		1	4	12.00	0.00	0.00
General Rate: 70.0000% of key fees										
2098 - NASA: Journey Into Outer Space Adobe Building	2015 Summer		Mon Jun 29-Thu Jul 2 1:00 PM-4:00 PM	Yes		1	4	12.00	0.00	0.00
General Rate: 70.0000% of key fees										
2101 - Eco-Explorers Adobe Building	2015 Summer		Mon Jul 27-Fri Jul 31 9:00 AM-3:00 PM	Yes		1	5	30.00	0.00	0.00
General Rate: 70.0000% of key fees										
2102 - Eureka! Young Inventors' Camp Adobe Building	2015 Summer		Mon Aug 3-Fri Aug 7 9:00 AM-3:00 PM	Yes		1	5	30.00	0.00	0.00
General Rate: 70.0000% of key fees										

Milpitas Recreation

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2103 - Reactions In Action! Adobe Building	2015 Summer	Mon Jun 15-Fri Jun 19 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
	General Rate: 70.0000% of key fees							
2104 - Jet Cadets Adobe Building	2015 Summer	Mon Jun 22-Fri Jun 26 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
	General Rate: 70.0000% of key fees							

RS II

City of Milpitas

455 E. Calaveras Blvd., Milpitas CA 95035

Purchase Order Requisition

Page ___ of ___

Vendor Number						

Recommended Supplier / Contact / Street Address	Reason For Recommendation	Ship To	Special Instructions	Department Head Approvals	Approval Date
Mad Science of Bay Area Attention: Susan Crawford 41324 Christy Street		City of Milpitas Dale Flunoy 457 E. Calaveras Blvd. Milpitas, CA 95035		RRoentgen	10/4/15
City, State & Zip Code Fremont, CA 94538	Telephone 877-390-5437	Fax #			

Check box if attachments are to be sent with PO	Check box to send PO to vendor	Date Required:	Requested by:	Ext.	Date Requested:	Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project
☐	☐		Dale Flunoy	3228		

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	1	Class Payments	$20,000.00	$20,000.00	100-170-4237
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	

Justification Or Intended Use Of Goods or Services

Sub Total		$20,000.00
Tax		$0.00
Freight		$0.00
Total		$20,000.00

Requestor Check-off list:

Agreement Dated: _____	✔ not applicable
Certificate of Insurance Expiration Date: _____	✔ not applicable
City Council Approved on (for purchases over $20,000): _____*	☐ not applicable
Competitive Bidding - 3 quotes received ☐ Yes** ☐ No	✔ not applicable
Sole Source Justification form (attach)	✔ not applicable
Emergency Procurement form (attach)	✔ not applicable
(*attach Agenda & Minutes) (**attach quotes)	

For Accounting Use Only

Signature Approval _____	Commodity Code: _____
CIP Budget Check _____	Ship to Code: _____
Acct. Code Check _____	PO Entered on: _____
Agreement Dated _____	PO # _____
Insurance Expires _____	Batch # _____
City Council _____	Entered by _____
Depreciable? If yes, use PO# EQ_____	
Multiple Account Use PO# MA_____	

Forward Original to Accounting Services, Save a copy for your records

Revised 10/6/10

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name: Barry Poole	
Address: 1947 Half Pence Way San Jose, CA 95132	**Tax ID Number:** 566 -61- 6073
Phone Number: (408) 569-3109	

This Agreement for Recreation Services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and **Barry Poole**, an individual or a California corporation ("Contractor") and this Agreement will be in effect from **June 8, 2015** to **August 31, 2105**, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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.

2. Contractor Not Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Tennis Classes** **(see attached scope of service fully incorporated herein)**

   A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.

   B. Contractor agrees to contact Recreation Services three (3) days prior to the first class meeting to verify class enrollment. If fewer than the minimum students have enrolled for the course, class status will be determined by Contractor and the designated Recreation Services Representative.

4. Compensation. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of terms as herein indicated:

   Payment Rate**: **70** % of receipts (resident rate only).

   A. Contractor shall be compensated based on enrollment totals at the end of the session. Recreation Services is not responsible for compensating Contractors participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.

   # of class meetings **1, 4, 5, 10**
   Minimum Participants **1, 3, 5, 6**
   Maximum Participants **18, 20, 24**

B. Should Contractor modify dates or times, or is tardy to a class more than two (2) times in a given session, resulting in changes to the schedule as listed in the Activity Guide, Contractor's final compensation shall be reduced by 10%.

C. In the event of a class cancellation by Contractor resulting in a make-up class, Contractor's payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up class.

D. Should Recreation Services be the cause of any class cancellation (i.e., scheduling conflict of facility or lack of building accessibility), Contractor shall be compensated for missed or re-scheduled class(es).

E. In the case that the class does not reach the stated minimum prior to the first class meeting and the class has not been previously canceled, the Contractor agrees that he/she will attend the first class meeting without compensation. If, after the first class meeting the stated minimum enrollment is still not reached, Recreation Services may, at its discretion cancel the class, or if said class is not canceled, Contractor may elect to cancel the class or conduct the class with a reduced class minimum. In the later case, compensation will be adjusted by Recreation Services.

F. Payment is for professional services and not as an hourly wage. City will not withhold from such payment any amount for federal or state income taxes. All instructors must complete a W-9 form.

5. Termination. City may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of City, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, City at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

6. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this Agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.

7. Insurance. Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, Contractor and any employees thereof will not be covered under the City's Worker's Compensation Fund. City will also not obtain unemployment insurance for Contractor. City's insurer will not defend or pay claims brought against Contractor. Contractor understands that as an Independent Contractor, he/she is responsible for his/her own insurance and liability coverage. BRP Contractor initials.

8. Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

9. Special Risks or Circumstances. City reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

11. Permission. Contractor grants full permission to the City of Milpitas for use of his/her name and photographs, videos, motion pictures or recordings for any publicity and promotion purposes without obligation or liability to contractor.

12. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to first class. Independent Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Recreation Services representative. The Independent Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.

13. Entire Agreement. This Agreement and the incorporated attachments represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

14. Indemnification. Contractor shall defend and indemnify City and its officers, agents, employees and volunteers (collectively, "City Parties") against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens, or other liens, labor disputes, losses, damages, expenses, charges or costs, of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to this Agreement or Contractor's activities pursuant to this Agreement, including without limitation, Claims caused by the concurrent negligent act, error, or omission, whether active or passive, of City Parties. Contractor shall have no obligation to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties. For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 2782.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

15. Governing Law and Venue. The laws of the State of California shall govern this Agreement. In the event that suit shall be brought by any of the parties, the parties agree venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United State District Court, Northern District of California, San Jose, California.

16. Compliance with Applicable Laws. Contractor shall comply with all laws applicable to the performance of the work hereunder.

17. Noncompliance and Equal Opportunity. Contractor 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 participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

18. No Oral Modification. This Agreement may not be altered or amended except by a written document

executed by the parties hereto.

19. Severability. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable in any respect under any statute, rule or law of any state or of the United States of America, such unenforceability will not affect any other provision of this Agreement, but, with respect only to the jurisdiction holding the provision to be unenforceable, this Agreement will then be construed as if such unenforceable provision or provisions had never been contained herein.

20. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

CONTRACTOR:

_____ Date: 5/26/2015
[Barry Poole]

CITY OF MILPITAS, CALIFORNIA

By: _____ Date: 6/4/15

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

Instructor

Barry Poole
1947 Half Pence Wy
San Jose CA 95132

Instructor ID:
SSN:
Home Phone: (408) 926-1947

Letter of Agreement

Contractor agrees to contact the Recreation Services three (3) working days prior to first class meeting to verify class enrollment. This agreement calls for contractor to teach the following class(es):

Activity Number - Name/Location	Season	Term	Date and Time	Primary Instructor	Instructor Role	# Weeks	# Days	# Gen. Hrs.	# Up-front Prep.Hrs.	# Ongoing Prep.Hrs.
2334 - Quick Start Slams Hall Tennis Court #2	2015 Summer		Wed May 6-Sat Aug 8 3:30 PM-4:15 PM	Yes		0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees										
2335 - Quick Start Slams Hall Tennis Court #1	2015 Summer		Sat Jun 6-Sat Jun 27 11:30 AM-12:15 PM	Yes		4	12	9.00	0.00	0.00
General Rate: 70.0000% of key fees										
2336 - Quick Start Slams Hall Tennis Court #2	2015 Summer		Sat Jul 11-Sat Aug 8 11:30 AM-12:15 PM	Yes		5	15	11.25	0.00	0.00
General Rate: 70.0000% of key fees										
2337 - Quick Start Slams Hall Tennis Court #2	2015 Summer		Mon Jun 1-Wed Jul 1 3:30 PM-4:15 PM	Yes		5	30	22.50	0.00	0.00
General Rate: 70.0000% of key fees										
2338 - Quick Start Slams Hall Tennis Court #2	2015 Summer		Mon Jul 6-Wed Aug 5 3:30 PM-4:15 PM	Yes		5	30	22.50	0.00	0.00
General Rate: 70.0000% of key fees										
2340 - Junior Stars Tennis Hall Tennis Court #3	2015 Summer		Sat Jun 6-Sat Aug 8 4:00 PM-5:30 PM	Yes		0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees										
2341 - Junior Stars Tennis Hall Tennis Court #3	2015 Summer		Sat Jun 6-Sat Jun 27 1:30 PM-3:00 PM	Yes		4	12	18.00	0.00	0.00
General Rate: 70.0000% of key fees										

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

2342 - Junior Stars Tennis Hall Tennis Court #2	2015 Summer	Sat Jul 11-Sat Aug 8 1:30 PM-3:00 PM	Yes	5	15	22.50	0.00	0.00
General Rate: 70.0000% of key fees								
2344 - Junior Stars Tennis Hall Tennis Court #2	2015 Summer	Tue Jul 7-Thu Aug 6 4:00 PM-5:30 PM	Yes	5	30	45.00	0.00	0.00
General Rate: 70.0000% of key fees								
2345 - Satellites Hall Tennis Court #1	2015 Summer	Mon Jun 1-Sat Aug 8 12:30 PM-1:30 PM	Yes	0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees								
2346 - Satellites Hall Tennis Court #3	2015 Summer	Sat Jun 6-Sat Jun 27 12:30 PM-1:30 PM	Yes	4	12	12.00	0.00	0.00
General Rate: 70.0000% of key fees								
2347 - Satellites Hall Tennis Court #3	2015 Summer	Sat Jul 11-Sat Aug 8 12:30 PM-1:30 PM	Yes	5	15	15.00	0.00	0.00
General Rate: 70.0000% of key fees								
2349 - Satellites Hall Tennis Court #2	2015 Summer	Mon Jul 6-Wed Aug 5 4:30 PM-5:30 PM	Yes	5	30	30.00	0.00	0.00
General Rate: 70.0000% of key fees								
2350 - Adult Basic Tennis Hall Tennis Court #1	2015 Summer	Wed Jun 3-Sat Aug 8 10:00 AM-11:30 AM	Yes	0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees								
2351 - Adult Basic Tennis Hall Tennis Court #1	2015 Summer	Sat Jun 6-Sat Jun 27 10:00 AM-11:30 AM	Yes	4	12	18.00	0.00	0.00
General Rate: 70.0000% of key fees								
2352 - Adult Basic Tennis Hall Tennis Court #3	2015 Summer	Sat Jul 11-Sat Aug 8 10:00 AM-11:30 AM	Yes	5	15	22.50	0.00	0.00
General Rate: 70.0000% of key fees								
2353 - Adult Basic Tennis Hall Tennis Court #2	2015 Summer	Wed Jun 3-Wed Jul 1 7:00 PM-8:30 PM	Yes	5	15	22.50	0.00	0.00
General Rate: 70.0000% of key fees								

Milpitas Recreation

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Milpitas, CA, 95035
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2354 - Adult Basic Tennis Hall Tennis Court #1	2015 Summer	Wed Jul 8-Wed Aug 5 7:00 PM-8:30 PM	Yes	5	15	22.50	0.00	0.00
General Rate: 70.0000% of key fees								
2372 - Private Tennis Lessons - June Hall Tennis Court #1	2015 Summer	Tue Jun 2-Tue Jun 30 6:00 PM-8:00 PM	Yes	0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees								
2373 - Private Tennis Lessons - July Hall Tennis Court #1	2015 Summer	Wed Jul 1-Fri Jul 31 10:00 AM-12:00 PM	Yes	0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees								
2374 - Private Tennis Lessons - August Hall Tennis Court #1	2015 Summer	Sat Aug 1-Mon Aug 31 10:00 AM-12:00 PM	Yes	0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees								
2376 - Stars Tennis Camp Hall Tennis Court #1	2015 Summer	Mon Jun 8-Fri Jul 31 9:00 AM-12:00 PM	Yes	0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees								
2377 - Stars Tennis Camp Hall Tennis Court #3	2015 Summer	Mon Jun 8-Fri Jun 12 9:00 AM-12:00 PM	Yes	1	15	45.00	0.00	0.00
General Rate: 70.0000% of key fees								
2378 - Stars Tennis Camp Hall Tennis Court #2	2015 Summer	Mon Jun 15-Fri Jun 19 9:00 AM-12:00 PM	Yes	1	15	45.00	0.00	0.00
General Rate: 70.0000% of key fees								
2380 - Stars Tennis Camp Hall Tennis Court #1	2015 Summer	Mon Jun 22-Fri Jun 26 9:00 AM-12:00 PM	Yes	1	15	45.00	0.00	0.00
General Rate: 70.0000% of key fees								
2381 - Stars Tennis Camp Hall Tennis Court #1	2015 Summer	Mon Jun 29-Thu Jul 2 9:00 AM-12:00 PM	Yes	1	12	36.00	0.00	0.00
General Rate: 70.0000% of key fees								
2382 - Stars Tennis Camp Hall Tennis Court #3	2015 Summer	Mon Jul 6-Fri Jul 10 9:00 AM-12:00 PM	Yes	1	15	45.00	0.00	0.00
General Rate: 70.0000% of key fees								

Milpitas Recreation

457 E. Calaveras Blvd.
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2384 - Stars Tennis Camp Hall Tennis Court #2	2015 Summer	Mon Jul 13-Fri Jul 17 9:00 AM-12:00 PM	Yes	1	15	45.00	0.00	0.00
General Rate: 70.0000% of key fees								
2386 - Stars Tennis Camp Hall Tennis Court #1	2015 Summer	Mon Jul 20-Fri Jul 24 9:00 AM-12:00 PM	Yes	1	15	45.00	0.00	0.00
General Rate: 70.0000% of key fees								
2387 - Stars Tennis Camp Hall Tennis Court #1	2015 Summer	Mon Jul 27-Fri Jul 31 9:00 AM-12:00 PM	Yes	1	15	45.00	0.00	0.00
General Rate: 70.0000% of key fees								
2397 - USTA Jr. League Team Tennis 1 Hall Tennis Court #2	2015 Summer	Thu Jun 11-Thu Jul 16 1:00 PM-3:00 PM	Yes	0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees								
2398 - USTA Jr. League Team Tennis 1 Hall Tennis Court #1	2015 Summer	Thu Jun 11-Thu Jun 11 1:00 PM-3:00 PM	Yes	1	3	6.00	0.00	0.00
General Rate: 70.0000% of key fees								
2399 - USTA Jr. League Team Tennis 1 Hall Tennis Court #1	2015 Summer	Thu Jun 18-Thu Jun 18 1:00 PM-3:00 PM	Yes	1	3	6.00	0.00	0.00
General Rate: 70.0000% of key fees								
2400 - USTA Jr. League Team Tennis 1 Hall Tennis Court #2	2015 Summer	Thu Jun 25-Thu Jun 25 1:00 PM-3:00 PM	Yes	1	3	6.00	0.00	0.00
General Rate: 70.0000% of key fees								
2401 - USTA Jr. League Team Tennis 1 Hall Tennis Court #3	2015 Summer	Thu Jul 9-Thu Jul 9 1:00 PM-3:00 PM	Yes	1	3	6.00	0.00	0.00
General Rate: 70.0000% of key fees								
2402 - USTA Jr. League Team Tennis 1 Hall Tennis Court #1	2015 Summer	Thu Jul 16-Thu Jul 16 1:00 PM-3:00 PM	Yes	1	3	6.00	0.00	0.00
General Rate: 70.0000% of key fees								

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

2403 - USTA Jr. League Team Tennis 2 Hall Tennis Court #2	2015 Summer	Fri Jun 12-Fri Jul 17 1:00 PM-3:00 PM	Yes	0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees								
2405 - USTA Jr. League Team Tennis 2 Hall Tennis Court #1	2015 Summer	Fri Jun 19-Fri Jun 19 1:00 PM-3:00 PM	Yes	1	3	6.00	0.00	0.00
General Rate: 70.0000% of key fees								
2406 - USTA Jr. League Team Tennis 2 Hall Tennis Court #1	2015 Summer	Fri Jun 26-Fri Jun 26 1:00 PM-3:00 PM	Yes	1	3	6.00	0.00	0.00
General Rate: 70.0000% of key fees								
2407 - USTA Jr. League Team Tennis 2 Hall Tennis Court #2	2015 Summer	Fri Jul 10-Fri Jul 10 1:00 PM-3:00 PM	Yes	1	3	6.00	0.00	0.00
General Rate: 70.0000% of key fees								
2408 - USTA Jr. League Team Tennis 2 Hall Tennis Court #2	2015 Summer	Fri Jul 17-Fri Jul 17 1:00 PM-3:00 PM	Yes	1	3	6.00	0.00	0.00
General Rate: 70.0000% of key fees								

City of Milpitas

455 E. Calaveras Blvd., Milpitas CA 95035

Purchase Order Requisition

Page ___ of ___

Vendor Number	Recommended Supplier / Contact / Street Address	Reason For Recommendation	Ship To	Special Instructions	Department Head Approvals	Approval Date
27910	Barry Poole 1947 Half Pence Way		City of Milpitas Dale Flunoy 457 E. Calaveras Blvd. Milpitas, CA 95035		R Florentzen	10/4/15
	City, State & Zip Code San Jose, CA 95132	Telephone 408-569-3109	Fax #			
Check box if attachments are to be sent with PO ☐	Check box to send PO to vendor ☐	Date Required:	Requested by: Dale Flunoy Ext. 3228	Date Requested:	Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project	

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	1	Class payments	$30,000.00	$30,000.00	100-170-4237
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	

Justification Or Intended Use Of Goods or Services

Sub Total		$30,000.00
Tax		$0.00
Freight		$0.00
Total		$30,000.00

Requestor Check-off list:

Agreement Dated: _____ ☑ not applicable

Certificate of Insurance Expiration Date: _____ ☑ not applicable

City Council Approved on (for purchases over $20,000): _____* ☐ not applicable

Competitive Bidding - 3 quotes received ☐ Yes** ☐ No ☑ not applicable

Sole Source Justification form (attach) ☑ not applicable

Emergency Procurement form (attach) ☑ not applicable

(*attach Agenda & Minutes) (**attach quotes)

For Accounting Use Only

Signature Approval _____ Commodity Code: _____

CIP Budget Check _____ Ship to Code: _____

Acct. Code Check _____ PO Entered on: _____

Agreement Dated _____ PO # _____

Insurance Expires _____ Batch # _____

City Council _____ Entered by _____

Depreciable? If yes, use PO# EQ _____

Multiple Account Use PO# MA _____

Forward Original to Accounting Services, Save a copy for your records

Revised 10/6/10

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name: Irene Saxe, Harmony Makers	
Address: 241 Barbara Drive Los Gatos, Ca 95132	**Tax ID Number:** 46-3769122
Phone Number: (408) 813-3043	

This Agreement for Recreation Services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and **Irene Saxe,** an individual or a California corporation ("Contractor") and this Agreement will be in effect from **June 8, 2015** to **August 31, 2105**, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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.

2. Contractor Not Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Music Together and Ukulele Classes** **(see attached scope of service fully incorporated herein)**

   A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.

   B. Contractor agrees to contact Recreation Services three (3) days prior to the first class meeting to verify class enrollment. If fewer than the minimum students have enrolled for the course, class status will be determined by Contractor and the designated Recreation Services Representative.

4. Compensation. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of terms as herein indicated:

   Payment Rate**: **70** % of receipts (resident rate only).

   A. Contractor shall be compensated based on enrollment totals at the end of the session. Recreation Services is not responsible for compensating Contractors participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.

   # of class meetings **7 and 10**
   Minimum Participants **4, 6**
   Maximum Participants **8, 12**

B. Should Contractor modify dates or times, or is tardy to a class more than two (2) times in a given session, resulting in changes to the schedule as listed in the Activity Guide, Contractor's final compensation shall be reduced by 10%.

C. In the event of a class cancellation by Contractor resulting in a make-up class, Contractor's payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up class.

D. Should Recreation Services be the cause of any class cancellation (i.e., scheduling conflict of facility or lack of building accessibility), Contractor shall be compensated for missed or re-scheduled class(es).

E. In the case that the class does not reach the stated minimum prior to the first class meeting and the class has not been previously canceled, the Contractor agrees that he/she will attend the first class meeting without compensation. If, after the first class meeting the stated minimum enrollment is still not reached, Recreation Services may, at its discretion cancel the class, or if said class is not canceled, Contractor may elect to cancel the class or conduct the class with a reduced class minimum. In the later case, compensation will be adjusted by Recreation Services.

F. Payment is for professional services and not as an hourly wage. City will not withhold from such payment any amount for federal or state income taxes. All instructors must complete a W-9 form.

5. Termination. City may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of City, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, City at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

6. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this Agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.

7. Insurance. Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, Contractor and any employees thereof will not be covered under the City's Worker's Compensation Fund. City will also not obtain unemployment insurance for Contractor. City's insurer will not defend or pay claims brought against Contractor. Contractor understands that as an Independent Contractor, he/she is responsible for his/her own insurance and liability coverage. JVL Contractor initials.

8. Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

9. Special Risks or Circumstances. City reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

11. Permission. Contractor grants full permission to the City of Milpitas for use of his/her name and photographs, videos, motion pictures or recordings for any publicity and promotion purposes without obligation or liability to contractor.

12. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to first class. Independent Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Recreation Services representative. The Independent Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.

13. Entire Agreement. This Agreement and the incorporated attachments represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

14. Indemnification. Contractor shall defend and indemnify City and its officers, agents, employees and volunteers (collectively, "City Parties") against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens, or other liens, labor disputes, losses, damages, expenses, charges or costs, of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to this Agreement or Contractor's activities pursuant to this Agreement, including without limitation, Claims caused by the concurrent negligent act, error, or omission, whether active or passive, of City Parties. Contractor shall have no obligation to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties. For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 2782.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

15. Governing Law and Venue. The laws of the State of California shall govern this Agreement. In the event that suit shall be brought by any of the parties, the parties agree venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United State District Court, Northern District of California, San Jose, California.

16. Compliance with Applicable Laws. Contractor shall comply with all laws applicable to the performance of the work hereunder.

17. Noncompliance and Equal Opportunity. Contractor 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 participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

18. No Oral Modification. This Agreement may not be altered or amended except by a written document

executed by the parties hereto.

19. Severability. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable in any respect under any statute, rule or law of any state or of the United States of America, such unenforceability will not affect any other provision of this Agreement, but, with respect only to the jurisdiction holding the provision to be unenforceable, this Agreement will then be construed as if such unenforceable provision or provisions had never been contained herein.

20. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

CONTRACTOR:

Irene V Saxe Date: 5/25/15

[Irene Saxe, Harmony Makers]

CITY OF MILPITAS, CALIFORNIA

By: Renee Lorentzen Date: 6/4/15

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

Instructor

Irene Saxe
241 Barbara Dr
Los Gatos CA 95032

Instructor ID:
SSN:
Home Phone: (408) 813-3043

Letter of Agreement

Contractor agrees to contact the Recreation Services three (3) working days prior to first class meeting to verify class enrollment. This agreement calls for contractor to teach the following class(es):

Activity Number - Name/Location	Season	Term	Date and Time	Primary Instructor	Instructor Role	# Weeks	# Days	# Gen. Hrs.	# Up-front Prep.Hrs.	# Ongoing Prep.Hrs.
1993 - Music Together MCC Large Meeting Room	2015 Summer		Tue Jun 9-Sat Aug 22 9:30 AM-10:15 AM	Yes		0	0	0.00	0.00	0.00
General Rate: 70.0000% of key fees										
1994 - Music Together MCC Large Meeting Room	2015 Summer		Tue Jun 9-Tue Aug 18 9:30 AM-10:15 AM	Yes		10	10	7.50	0.00	0.00
General Rate: 70.0000% of key fees										
1995 - Music Together MCC Large Meeting Room	2015 Summer		Tue Jun 9-Tue Aug 18 10:30 AM-11:15 AM	Yes		10	10	7.50	0.00	0.00
General Rate: 70.0000% of key fees										
1996 - Music Together MCC Large Meeting Room	2015 Summer		Tue Jun 9-Tue Aug 18 11:30 AM-12:15 PM	Yes		10	10	7.50	0.00	0.00
General Rate: 70.0000% of key fees										
1997 - Music Together MCC Large Meeting Room	2015 Summer		Wed Jun 10-Wed Aug 19 5:30 PM-6:15 PM	Yes		10	10	7.50	0.00	0.00
General Rate: 70.0000% of key fees										
1998 - Music Together MCC Large Meeting Room	2015 Summer		Wed Jun 10-Wed Aug 19 6:30 PM-7:15 PM	Yes		10	10	7.50	0.00	0.00
General Rate: 70.0000% of key fees										

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

1999 - Music Together MCC Large Meeting Room	2015 Summer	Sat Jun 13-Sat Aug 22 10:00 AM-10:45 AM	Yes	10	10	7.50	0.00	0.00
General Rate: 70.0000% of key fees								
2000 - Music Together MCC Large Meeting Room	2015 Summer	Sat Jun 13-Sat Aug 22 11:00 AM-11:45 AM	Yes	10	10	7.50	0.00	0.00
General Rate: 70.0000% of key fees								
2001 - Ukulele for Fun MCC Large Meeting Room	2015 Summer	Thu Jun 18-Thu Aug 6 7:30 PM-8:15 PM	Yes	7	7	5.25	0.00	0.00
General Rate: 70.0000% of key fees								
2024 - Ukulele for Parent & Preschooler MCC Large Meeting Room	2015 Summer	Thu Jun 18-Thu Aug 6 5:30 PM-6:15 PM	Yes	7	7	5.25	0.00	0.00
General Rate: 70.0000% of key fees								
2025 - Ukulele for Parent & Child MCC Large Meeting Room	2015 Summer	Thu Jun 18-Thu Aug 6 6:30 PM-7:15 PM	Yes	7	7	5.25	0.00	0.00
General Rate: 70.0000% of key fees								

City of Milpitas

455 E. Calaveras Blvd., Milpitas CA 95035

Purchase Order Requisition

Page ___ of ___

Vendor Number	Recommended Supplier / Contact / Street Address	Reason For Recommendation	Ship To	Special Instructions	Department Head Approvals	Approval Date
15605	Irene Saxe 241 Barbara Drive		City of Milpitas Dale Flunoy 457 E. Calaveras Blvd. Milpitas, CA 95035		Rosentzen	10/4/15
	City, State & Zip Code Los Gatos, CA 95032	Telephone 408-813-3043	Fax #			
Check box if attachments are to be sent with PO ☐	Check box to send PO to vendor ☐	Date Required:	Requested by: Dale Flunoy Ext. 3228	Date Requested:	Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project	

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	1	Class payments	$24,000.00	$24,000.00	100-170-4237
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	

Justification Or Intended Use Of Goods or Services

Sub Total		$24,000.00
Tax		$0.00
Freight		$0.00
Total		$24,000.00

Requestor Check-off list:

Agreement Dated: _____	✔ not applicable
Certificate of Insurance Expiration Date: _____	✔ not applicable
City Council Approved on (for purchases over $20,000): _____ *	✔ not applicable
Competitive Bidding - 3 quotes received ☐ Yes** ☐ No	☐ not applicable
Sole Source Justification form (attach)	✔ not applicable
Emergency Procurement form (attach)	✔ not applicable
(*attach Agenda & Minutes) (**attach quotes)	

For Accounting Use Only

Signature Approval _____	Commodity Code: _____
CIP Budget Check _____	Ship to Code: _____
Acct. Code Check _____	PO Entered on: _____
Agreement Dated _____	PO # _____
Insurance Expires _____	Batch # _____
City Council _____	Entered by _____
Depreciable? If yes, use PO# EQ_____	
Multiple Account Use PO# MA _____	

Forward Original to Accounting Services, Save a copy for your records

Revised 10/6/10

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name: Noteworthy Music School **Attention: DebbyLee Macchione**	
Address: 1220 Tasman Drive, #457 **Sunnyvale. CA 94089**	**Tax ID Number:** 77 - 0208104
Phone Number: (408) 734-4211	

This Agreement for Recreation Services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and **Noteworthy Music School**, an individual or a California corporation ("Contractor") and this Agreement will be in effect from **June 8, 2015** to **August 31, 2015**, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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.

2. Contractor Not Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Keyboards, Guitar, Semi-Private Lessons Beethoven Beginners and Mozart Beginners Classes** **(see attached scope of service fully incorporated herein)**

   A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.

   B. Contractor agrees to contact Recreation Services three (3) days prior to the first class meeting to verify class enrollment. If fewer than the minimum students have enrolled for the course, class status will be determined by Contractor and the designated Recreation Services Representative.

4. Compensation. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of terms as herein indicated:

   Payment Rate**: **72** % of receipts (resident rate only).

   A. Contractor shall be compensated based on enrollment totals at the end of the session. Recreation Services is not responsible for compensating Contractors participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.

   # of class meetings **8 and 9**
   Minimum Participants **2, 4**
   Maximum Participants **6**

B. Should Contractor modify dates or times, or is tardy to a class more than two (2) times in a given session, resulting in changes to the schedule as listed in the Activity Guide, Contractor's final compensation shall be reduced by 10%.

C. In the event of a class cancellation by Contractor resulting in a make-up class, Contractor's payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up class.

D. Should Recreation Services be the cause of any class cancellation (i.e., scheduling conflict of facility or lack of building accessibility), Contractor shall be compensated for missed or re-scheduled class(es).

E. In the case that the class does not reach the stated minimum prior to the first class meeting and the class has not been previously canceled, the Contractor agrees that he/she will attend the first class meeting without compensation. If, after the first class meeting the stated minimum enrollment is still not reached, Recreation Services may, at its discretion cancel the class, or if said class is not canceled, Contractor may elect to cancel the class or conduct the class with a reduced class minimum. In the later case, compensation will be adjusted by Recreation Services.

F. Payment is for professional services and not as an hourly wage. City will not withhold from such payment any amount for federal or state income taxes. All instructors must complete a W-9 form.

5. Termination. City may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of City, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, City at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

6. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this Agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.

7. Insurance. Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, Contractor and any employees thereof will not be covered under the City's Worker's Compensation Fund. City will also not obtain unemployment insurance for Contractor. City's insurer will not defend or pay claims brought against Contractor. Contractor understands that as an Independent Contractor, he/she is responsible for his/her own insurance and liability coverage. _____ Contractor initials.

8. Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

9. Special Risks or Circumstances. City reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

11. Permission. Contractor grants full permission to the City of Milpitas for use of his/her name and photographs, videos, motion pictures or recordings for any publicity and promotion purposes without obligation or liability to contractor.

12. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to first class. Independent Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Recreation Services representative. The Independent Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.

13. Entire Agreement. This Agreement and the incorporated attachments represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

14. Indemnification. Contractor shall defend and indemnify City and its officers, agents, employees and volunteers (collectively, "City Parties") against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens, or other liens, labor disputes, losses, damages, expenses, charges or costs, of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to this Agreement or Contractor's activities pursuant to this Agreement, including without limitation, Claims caused by the concurrent negligent act, error, or omission, whether active or passive, of City Parties. Contractor shall have no obligation to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties. For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 2782.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

15. Governing Law and Venue. The laws of the State of California shall govern this Agreement. In the event that suit shall be brought by any of the parties, the parties agree venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United State District Court, Northern District of California, San Jose, California.

16. Compliance with Applicable Laws. Contractor shall comply with all laws applicable to the performance of the work hereunder.

17. Noncompliance and Equal Opportunity. Contractor 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 participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

18. No Oral Modification. This Agreement may not be altered or amended except by a written document executed by the parties hereto.

19. Severability. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable in any respect under any statute, rule or law of any state or of the United States of America, such unenforceability will not affect any other provision of this Agreement, but, with respect only to the jurisdiction holding the provision to be unenforceable, this Agreement will then be construed as if such unenforceable provision or provisions had never been contained herein.

20. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

CONTRACTOR:

DebbyLee Macchione — Date: May 28, 2015

[Noteworthy Music School (DebbyLee Macchione)]

CITY OF MILPITAS, CALIFORNIA

By: Renee Lorentzen — Date: 6/4/15

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

Instructor

Noteworthy Music
1220 Tasman Dr #457
Sunnyvale CA 94089

Instructor ID:
SSN:
Home Phone: (408) 734-4211

Letter of Agreement

Contractor agrees to contact the Recreation Services three (3) working days prior to first class meeting to verify class enrollment. This agreement calls for contractor to teach the following class(es):

Activity Number - Name/Location	Season	Term	Date and Time	Primary Instructor	Instructor Role	# Weeks	# Days	# Gen. Hrs.	# Up-front Prep.Hrs.	# Ongoing Prep.Hrs.
2227 - Keyboards Level I MSRC Classroom 146	2015 Summer		Thu Jun 11-Sat Aug 8 3:30 PM-4:15 PM	Yes		0	0	0.00	0.00	0.00
General Rate: 72.0000% of key fees										
2228 - Keyboards Level I MSRC Classroom 146	2015 Summer		Thu Jun 11-Thu Aug 6 3:30 PM-4:15 PM	Yes		9	9	6.75	0.00	0.00
General Rate: 72.0000% of key fees										
2229 - Keyboards Level I MSRC Classroom 146	2015 Summer		Fri Jun 12-Fri Aug 7 4:20 PM-5:05 PM	Yes		8	8	6.00	0.00	0.00
General Rate: 72.0000% of key fees										
2230 - Keyboards Level I MSRC Classroom 146	2015 Summer		Sat Jun 13-Sat Aug 8 11:30 AM-12:15 PM	Yes		8	8	6.00	0.00	0.00
General Rate: 72.0000% of key fees										
2231 - Keyboards Level 2 & Up MSRC Classroom 146	2015 Summer		Thu Jun 11-Sat Aug 8 4:20 PM-5:05 PM	Yes		0	0	0.00	0.00	0.00
General Rate: 72.0000% of key fees										
2232 - Keyboards Level 2 & Up MSRC Classroom 146	2015 Summer		Thu Jun 11-Thu Aug 6 4:20 PM-5:05 PM	Yes		9	9	6.75	0.00	0.00
General Rate: 72.0000% of key fees										
2233 - Keyboards Level 2 & Up MSRC Classroom 146	2015 Summer		Thu Jun 11-Thu Aug 6 5:10 PM-5:55 PM	Yes		9	9	6.75	0.00	0.00
General Rate: 72.0000% of key fees										

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

2234 - Keyboards Level 2 & Up MSRC Classroom 146	2015 Summer	Fri Jun 12-Fri Aug 7 3:30 PM-4:15 PM	Yes	8	8	6.00	0.00	0.00
General Rate: 72.0000% of key fees								
2235 - Keyboards Level 2 & Up MSRC Classroom 146	2015 Summer	Fri Jun 12-Fri Aug 7 5:10 PM-5:55 PM	Yes	8	8	6.00	0.00	0.00
General Rate: 72.0000% of key fees								
2236 - Keyboards Level 2 & Up MSRC Classroom 146	2015 Summer	Fri Jun 12-Fri Aug 7 6:00 PM-6:45 PM	Yes	8	8	6.00	0.00	0.00
General Rate: 72.0000% of key fees								
2237 - Keyboards Level 2 & Up MSRC Classroom 146	2015 Summer	Sat Jun 13-Sat Aug 8 10:40 AM-11:25 AM	Yes	8	8	6.00	0.00	0.00
General Rate: 72.0000% of key fees								
2239 - Semi-Private Keyboard Level 2 & Up MSRC Classroom 146	2015 Summer	Fri Jun 12-Fri Aug 7 6:45 PM-7:30 PM	Yes	8	8	6.00	0.00	0.00
General Rate: 72.0000% of key fees								
2240 - Guitar Level 1 MSRC Classroom 146	2015 Summer	Wed Jun 10-Wed Aug 5 3:45 PM-4:30 PM	Yes	9	9	6.75	0.00	0.00
General Rate: 72.0000% of key fees								
2241 - Guitar Level 2 MSRC Classroom 146	2015 Summer	Wed Jun 10-Wed Aug 5 4:30 PM-5:15 PM	Yes	9	9	6.75	0.00	0.00
General Rate: 72.0000% of key fees								
2242 - Guitar Level 2 MSRC Classroom 146	2015 Summer	Wed Jun 10-Wed Aug 5 5:15 PM-6:00 PM	Yes	9	9	6.75	0.00	0.00
General Rate: 72.0000% of key fees								
2243 - Beethoven Beginners MSRC Classroom 146	2015 Summer	Sat Jun 13-Sat Aug 8 9:00 AM-9:45 AM	Yes	8	8	6.00	0.00	0.00
General Rate: 72.0000% of key fees								
2244 - Mozart Masters MSRC Classroom 146	2015 Summer	Sat Jun 13-Sat Aug 8 9:45 AM-10:30 AM	Yes	8	8	6.00	0.00	0.00
General Rate: 72.0000% of key fees								

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2743 - Beethoven Beginners MSRC Classroom 146	2015 Summer	Sat Jun 13-Sat Aug 8 12:20 PM-1:05 PM	Yes	8	8	6.00	0.00	0.00

General Rate: 72.0000% of key fees

RS II

City of Milpitas

455 E. Calaveras Blvd., Milpitas CA 95035

Purchase Order Requisition

Page ___ of ___

Vendor Number	Recommended Supplier / Contact / Street Address	Reason For Recommendation	Ship To	Special Instructions	Department Head Approvals	Approval Date
13785	Noteworthy Music 1220 Tasman Drive, #7		City of Milpitas Dale Flunoy 457 E. Calaveras Blvd. Milpitas, CA 95035		RBrentzen	10/14/15
	City, State & Zip Code Sunnyvale, CA 94089	Telephone 408-734-4211	Fax #			
Check box if attachments are to be sent with PO ☐	Check box to send PO to vendor ☐	Date Required:	Requested by: Dale Flunoy Ext. 3228	Date Requested:	Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project	

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	1	Class payments	$30,000.00	$30,000.00	100-170-4237
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	

Justification Or Intended Use Of Goods or Services

Sub Total		$30,000.00
Tax		$0.00
Freight		$0.00
Total		$30,000.00

Requestor Check-off list:

Agreement Dated: _____	✔ not applicable
Certificate of Insurance Expiration Date: _____	✔ not applicable
City Council Approved on (for purchases over $20,000): _____*	☐ not applicable
Competitive Bidding - 3 quotes received ☐ Yes** ☐ No	✔ not applicable
Sole Source Justification form (attach)	✔ not applicable
Emergency Procurement form (attach)	✔ not applicable
(*attach Agenda & Minutes) (**attach quotes)	

For Accounting Use Only

Signature Approval _____	Commodity Code: _____
CIP Budget Check _____	Ship to Code: _____
Acct. Code Check _____	PO Entered on: _____
Agreement Dated _____	PO # _____
Insurance Expires _____	Batch # _____
City Council _____	Entered by _____
Depreciable? If yes, use PO# EQ_____	
Multiple Account Use PO# MA_____	

Forward Original to Accounting Services, Save a copy for your records

Revised 10/6/10

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name: Jeannette Bumagat	
Address: 296 N. Milpitas Blvd. Milpitas, CA 95035	**Tax ID Number: -** 586-38-8524
Phone Number: (408) 262-0770	

This Agreement for Recreation Services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and **Jeannette Bumagat**, an individual or a California corporation ("Contractor") and this Agreement will be in effect from **June 1, 2015** to **September 30, 2015**, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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.

2. Contractor Not Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Basketball Camps** **(see attached scope of service fully incorporated herein)**

   A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.

   B. Contractor agrees to contact Recreation Services three (3) days prior to the first class meeting to verify class enrollment. If fewer than the minimum students have enrolled for the course, class status will be determined by Contractor and the designated Recreation Services Representative.

4. Compensation. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of terms as herein indicated:

   Payment Rate**: **65** % of receipts (resident rate only).

   A. Contractor shall be compensated based on enrollment totals at the end of the session. Recreation Services is not responsible for compensating Contractors participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.

   # of class meetings **5**
   Minimum Participants **30**
   Maximum Participants **80**

B. Should Contractor modify dates or times, or is tardy to a class more than two (2) times in a given session, resulting in changes to the schedule as listed in the Activity Guide, Contractor's final compensation shall be reduced by 10%.

C. In the event of a class cancellation by Contractor resulting in a make-up class, Contractor's payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up class.

D. Should Recreation Services be the cause of any class cancellation (i.e., scheduling conflict of facility or lack of building accessibility), Contractor shall be compensated for missed or re-scheduled class(es).

E. In the case that the class does not reach the stated minimum prior to the first class meeting and the class has not been previously canceled, the Contractor agrees that he/she will attend the first class meeting without compensation. If, after the first class meeting the stated minimum enrollment is still not reached, Recreation Services may, at its discretion cancel the class, or if said class is not canceled, Contractor may elect to cancel the class or conduct the class with a reduced class minimum. In the later case, compensation will be adjusted by Recreation Services.

F. Payment is for professional services and not as an hourly wage. City will not withhold from such payment any amount for federal or state income taxes. All instructors must complete a W-9 form.

5. Termination. City may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of City, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, City at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

6. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this Agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.

7. Insurance. Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, Contractor and any employees thereof will not be covered under the City's Worker's Compensation Fund. City will also not obtain unemployment insurance for Contractor. City's insurer will not defend or pay claims brought against Contractor. Contractor understands that as an Independent Contractor, he/she is responsible for his/her own insurance and liability coverage. AKB Contractor initials.

8. Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

9. Special Risks or Circumstances. City reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

11. Permission. Contractor grants full permission to the City of Milpitas for use of his/her name and photographs, videos, motion pictures or recordings for any publicity and promotion purposes without obligation or liability to contractor.

12. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to first class. Independent Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Recreation Services representative. The Independent Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.

13. Entire Agreement. This Agreement and the incorporated attachments represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

14. Indemnification. Contractor shall defend and indemnify City and its officers, agents, employees and volunteers (collectively, "City Parties") against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens, or other liens, labor disputes, losses, damages, expenses, charges or costs, of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to this Agreement or Contractor's activities pursuant to this Agreement, including without limitation, Claims caused by the concurrent negligent act, error, or omission, whether active or passive, of City Parties. Contractor shall have no obligation to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties. For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 2782.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

15. Governing Law and Venue. The laws of the State of California shall govern this Agreement. In the event that suit shall be brought by any of the parties, the parties agree venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United State District Court, Northern District of California, San Jose, California.

16. Compliance with Applicable Laws. Contractor shall comply with all laws applicable to the performance of the work hereunder.

17. Noncompliance and Equal Opportunity. Contractor 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 participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

18. No Oral Modification. This Agreement may not be altered or amended except by a written document

executed by the parties hereto.

19. Severability. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable in any respect under any statute, rule or law of any state or of the United States of America, such unenforceability will not affect any other provision of this Agreement, but, with respect only to the jurisdiction holding the provision to be unenforceable, this Agreement will then be construed as if such unenforceable provision or provisions had never been contained herein.

20. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

CONTRACTOR:

Jeannette K. Bumagat
[Jeannette Bumagat]

Date: May 27, 2015

CITY OF MILPITAS, CALIFORNIA

By: Renee Lorentzen

Date: 10/4/15

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

Instructor

Jeannette K Bumagat
296 N. Abbott Ave.
Milpitas CA 95035

Instructor ID:
SSN:
Home Phone: (408) 688-1995

Letter of Agreement

This agreement calls for you to teach the following activities:

Activity Number - Name/Location	Season	Term	Date and Time	Primary Instructor	Instructor Role	# Weeks	# Days	# Gen. Hrs.	# Up-front Prep.Hrs.	# Ongoing Prep.Hrs.
2303 - SBS Basketball Camp 3rd & 4th Grade MSC Gymnasium	2015 Summer		Mon Jun 15-Fri Jul 31 9:00 AM-3:00 PM	Yes		0	0	0.00	0.00	0.00
General Rate: 65.0000% of key fees										
2304 - SBS Basketball Camp 3rd & 4th Grade MSC Gymnasium	2015 Summer		Mon Jun 15-Fri Jun 19 9:00 AM-3:00 PM	Yes		1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees										
2305 - SBS Basketball Camp 3rd & 4th Grade MSC Gymnasium	2015 Summer		Mon Jun 22-Fri Jun 26 9:00 AM-3:00 PM	Yes		1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees										
2306 - SBS Basketball Camp 3rd & 4th Grade MSC Gymnasium	2015 Summer		Mon Jun 29-Thu Jul 2 9:00 AM-3:00 PM	Yes		1	4	24.00	0.00	0.00
General Rate: 65.0000% of key fees										
2307 - SBS Basketball Camp 3rd & 4th Grade MSC Gymnasium	2015 Summer		Mon Jul 6-Fri Jul 10 9:00 AM-3:00 PM	Yes		1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees										
2308 - SBS Basketball Camp 3rd & 4th Grade MSC Gymnasium	2015 Summer		Mon Jul 13-Fri Jul 17 9:00 AM-3:00 PM	Yes		1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees										

Milpitas Recreation

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Milpitas, CA, 95035
(408) 586-3210

2309 - SBS Basketball Camp 3rd & 4th Grade MSC Gymnasium	2015 Summer	Mon Jul 27-Fri Jul 31 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2310 - SBS Basketball Camp 5th & 6th Grade MSC Gymnasium	2015 Summer	Mon Jun 15-Fri Jul 31 9:00 AM-3:00 PM	Yes	0	0	0.00	0.00	0.00
General Rate: 65.0000% of key fees								
2311 - SBS Basketball Camp 5th & 6th Grade MSC Gymnasium	2015 Summer	Mon Jun 15-Fri Jun 19 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2312 - SBS Basketball Camp 5th & 6th Grade MSC Gymnasium	2015 Summer	Mon Jun 22-Fri Jun 26 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2313 - SBS Basketball Camp 5th & 6th Grade MSC Gymnasium	2015 Summer	Mon Jun 29-Thu Jul 2 9:00 AM-3:00 PM	Yes	1	4	24.00	0.00	0.00
General Rate: 65.0000% of key fees								
2314 - SBS Basketball Camp 5th & 6th Grade MSC Gymnasium	2015 Summer	Mon Jul 6-Fri Jul 10 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2315 - SBS Basketball Camp 5th & 6th Grade MSC Gymnasium	2015 Summer	Mon Jul 13-Fri Jul 17 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2316 - SBS Basketball Camp 5th & 6th Grade MSC Gymnasium	2015 Summer	Mon Jul 27-Fri Jul 31 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2317 - SBS Basketball Camp 7th & 8th Grade MSC Gymnasium	2015 Summer	Mon Jun 15-Fri Jul 31 9:00 AM-3:00 PM	Yes	0	0	0.00	0.00	0.00
General Rate: 65.0000% of key fees								

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

2318 - SBS Basketball Camp 7th & 2015 8th Grade Summer MSC Gymnasium	Mon Jun 15-Fri Jun 19 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees							
2319 - SBS Basketball Camp 7th & 2015 8th Grade Summer MSC Gymnasium	Mon Jun 22-Fri Jun 26 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees							
2320 - SBS Basketball Camp 7th & 2015 8th Grade Summer MSC Gymnasium	Mon Jun 29-Thu Jul 2 9:00 AM-3:00 PM	Yes	1	4	24.00	0.00	0.00
General Rate: 65.0000% of key fees							
2321 - SBS Basketball Camp 7th & 2015 8th Grade Summer MSC Gymnasium	Mon Jul 6-Fri Jul 10 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees							
2322 - SBS Basketball Camp 7th & 2015 8th Grade Summer MSC Gymnasium	Mon Jul 13-Fri Jul 17 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees							
2323 - SBS Basketball Camp 7th & 2015 8th Grade Summer MSC Gymnasium	Mon Jul 27-Fri Jul 31 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees							

City of Milpitas

455 E. Calaveras Blvd., Milpitas CA 95035

Purchase Order Requisition

Page ___ of ___

Vendor Number	Recommended Supplier / Contact / Street Address	Reason For Recommendation	Ship To	Special Instructions	Department Head Approvals	Approval Date
17374	South Bay Scholars Attention: Jeannette Bumagat 296 N. Abbott Avenue		City of Milpitas Dale Flunoy 457 E. Calaveras Blvd. Milpitas, CA 95035		Rosentzer	10/4/15
	City, State & Zip Code: Milpitas, CA 95035	Telephone: 408-668-1995	Fax #			
Check box if attachments are to be sent with PO ☐	Check box to send PO to vendor ☐	Date Required:	Requested by: Dale Flunoy Ext. 3228	Date Requested:	Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project	

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	1	Class payments	$20,000.00	$20,000.00	100-170-4237
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	

Justification Or Intended Use Of Goods or Services

Sub Total		$20,000.00
Tax		$0.00
Freight		$0.00
Total		$20,000.00

Requestor Check-off list:

Agreement Dated: _____	✔ not applicable
Certificate of Insurance Expiration Date: _____	✔ not applicable
City Council Approved on (for purchases over $20,000): _____*	☐ not applicable
Competitive Bidding - 3 quotes received ☐ Yes** ☐ No	✔ not applicable
Sole Source Justification form (attach)	✔ not applicable
Emergency Procurement form (attach)	✔ not applicable

(*attach Agenda & Minutes) (**attach quotes)

For Accounting Use Only

Signature Approval _____	Commodity Code: _____
CIP Budget Check _____	Ship to Code: _____
Acct. Code Check _____	PO Entered on: _____
Agreement Dated _____	PO # _____
Insurance Expires _____	Batch # _____
City Council _____	Entered by _____
Depreciable? If yes, use PO# EQ _____	
Multiple Account Use PO# MA _____	

Forward Original to Accounting Services, Save a copy for your records

Revised 10/6/10

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name: Patricia Jensen DBA, Jensen School of Dance	
Address: 1491 N. Milpitas Blvd. Milpitas, CA 95035	**Tax ID Number:** 554-94-1803
Phone Number: (408) 262-0770	

This Agreement for Recreation Services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and **Patricia Jensen DBA, Jensen School of Dance**, an individual or a California corporation ("Contractor") and this Agreement will be in effect from **June 8, 2015** to **August, 31, 2105**, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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.

2. Contractor Not Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Talented Tots, Ballet & Tap, Floor Gym, Tumbling, Hip Hop and Ballroom Classes** **(see attached scope of service fully incorporated herein)**

   A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.

   B. Contractor agrees to contact Recreation Services three (3) days prior to the first class meeting to verify class enrollment. If fewer than the minimum students have enrolled for the course, class status will be determined by Contractor and the designated Recreation Services Representative.

4. Compensation. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of terms as herein indicated:

   Payment Rate**: **75** % of receipts (resident rate only).

   A. Contractor shall be compensated based on enrollment totals at the end of the session. Recreation Services is not responsible for compensating Contractors participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.

   # of class meetings **4, 5, 6, 8**
   Minimum Participants **4, 7, 10**
   Maximum Participants **14, 20, 25, 40**

B. Should Contractor modify dates or times, or is tardy to a class more than two (2) times in a given session, resulting in changes to the schedule as listed in the Activity Guide, Contractor's final compensation shall be reduced by 10%.

C. In the event of a class cancellation by Contractor resulting in a make-up class, Contractor's payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up class.

D. Should Recreation Services be the cause of any class cancellation (i.e., scheduling conflict of facility or lack of building accessibility), Contractor shall be compensated for missed or re-scheduled class(es).

E. In the case that the class does not reach the stated minimum prior to the first class meeting and the class has not been previously canceled, the Contractor agrees that he/she will attend the first class meeting without compensation. If, after the first class meeting the stated minimum enrollment is still not reached, Recreation Services may, at its discretion cancel the class, or if said class is not canceled, Contractor may elect to cancel the class or conduct the class with a reduced class minimum. In the later case, compensation will be adjusted by Recreation Services.

F. Payment is for professional services and not as an hourly wage. City will not withhold from such payment any amount for federal or state income taxes. All instructors must complete a W-9 form.

5. Termination. City may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of City, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, City at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

6. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this Agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.

7. Insurance. Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, Contractor and any employees thereof will not be covered under the City's Worker's Compensation Fund. City will also not obtain unemployment insurance for Contractor. City's insurer will not defend or pay claims brought against Contractor. Contractor understands that as an Independent Contractor, he/she is responsible for his/her own insurance and liability coverage. RD Contractor initials.

8. Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

9. Special Risks or Circumstances. City reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

11. Permission. Contractor grants full permission to the City of Milpitas for use of his/her name and photographs, videos, motion pictures or recordings for any publicity and promotion purposes without obligation or liability to contractor.

12. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to first class. Independent Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Recreation Services representative. The Independent Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.

13. Entire Agreement. This Agreement and the incorporated attachments represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

14. Indemnification. Contractor shall defend and indemnify City and its officers, agents, employees and volunteers (collectively, "City Parties") against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens, or other liens, labor disputes, losses, damages, expenses, charges or costs, of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to this Agreement or Contractor's activities pursuant to this Agreement, including without limitation, Claims caused by the concurrent negligent act, error, or omission, whether active or passive, of City Parties. Contractor shall have no obligation to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties. For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 2782.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

15. Governing Law and Venue. The laws of the State of California shall govern this Agreement. In the event that suit shall be brought by any of the parties, the parties agree venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United State District Court, Northern District of California, San Jose, California.

16. Compliance with Applicable Laws. Contractor shall comply with all laws applicable to the performance of the work hereunder.

17. Noncompliance and Equal Opportunity. Contractor 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 participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

18. No Oral Modification. This Agreement may not be altered or amended except by a written document executed by the parties hereto.

19. Severability. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable in any respect under any statute, rule or law of any state or of the United States of America, such unenforceability will not affect any other provision of this Agreement, but, with respect only to the jurisdiction holding the provision to be unenforceable, this Agreement will then be construed as if such unenforceable provision or provisions had never been contained herein.

20. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

CONTRACTOR:

Patty Jensen _____ Date: 5/26/15

[Patty Jensen DBA, Jensen School of Dance]

CITY OF MILPITAS, CALIFORNIA

By: Renee Lorentzen _____ Date: 6/4/15

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

Instructor

Jensen School Of Performing Arts
Rita Kim Rahmen Jensen
1491 N. Milpitas Blvd.
Milpitas CA 95035

Instructor ID:
SSN:
Home Phone: (408) 262-0770

Letter of Agreement

This agreement calls for you to teach the following activities:

Activity Number - Name/Location	Season	Term	Date and Time	Primary Instructor	Instructor Role	# Weeks	# Days	# Gen. Hrs.	# Up-front Prep.Hrs.	# Ongoing Prep.Hrs.
1968 - Ballet & Tap Combo Level 1	2015 Summer		Wed Jun 3-Wed Jun 24 4:45 PM-5:30 PM	Yes		4	4	3.00	0.00	0.00
General Rate: 75.0000% of key fees										
1969 - Ballet & Tap Combo Level 1	2015 Summer		Tue Jun 2-Tue Jun 23 6:00 PM-6:45 PM	Yes		4	4	3.00	0.00	0.00
General Rate: 75.0000% of key fees										
1971 - Ballet Level 1	2015 Summer		Tue Jun 2-Tue Jun 23 4:00 PM-4:45 PM	Yes		4	4	3.00	0.00	0.00
General Rate: 75.0000% of key fees										
1972 - Ballet Level 1	2015 Summer		Tue Jul 7-Thu Jul 30 4:15 PM-5:00 PM	Yes		4	8	6.00	0.00	0.00
General Rate: 75.0000% of key fees										
1977 - Gymsters	2015 Summer		Thu Jun 4-Thu Jun 25 4:15 PM-5:00 PM	Yes		4	4	3.00	0.00	0.00
General Rate: 75.0000% of key fees										
1978 - Gymsters	2015 Summer		Thu Jul 9-Thu Jul 30 4:15 PM-5:00 PM	Yes		4	4	3.00	0.00	0.00
General Rate: 75.0000% of key fees										
1979 - Floor Gym	2015 Summer		Thu Jun 4-Thu Jun 25 5:00 PM-5:45 PM	Yes		4	4	3.00	0.00	0.00
General Rate: 75.0000% of key fees										
1980 - Floor Gym	2015 Summer		Thu Jul 9-Thu Jul 30 5:00 PM-5:45 PM	Yes		4	4	3.00	0.00	0.00
General Rate: 75.0000% of key fees										

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

1983 - Talented Tots	2015 Summer	Tue Jun 23-Thu Aug 13 9:30 AM-10:15 AM	Yes	0	0	0.00	0.00	0.00
	General Rate: 75.0000% of key fees							
1984 - Talented Tots	2015 Summer	Tue Jun 23-Thu Jul 16 9:30 AM-10:15 AM	Yes	4	8	6.00	0.00	0.00
	General Rate: 75.0000% of key fees							
1985 - Talented Tots	2015 Summer	Tue Jul 21-Thu Aug 13 9:30 AM-10:15 AM	Yes	4	8	6.00	0.00	0.00
	General Rate: 75.0000% of key fees							
1986 - Talented Tots	2015 Summer	Tue Jun 23-Tue Jul 14 9:30 AM-10:15 AM	Yes	4	4	3.00	0.00	0.00
	General Rate: 75.0000% of key fees							
1987 - Talented Tots	2015 Summer	Tue Jul 21-Tue Aug 11 9:30 AM-10:15 AM	Yes	4	4	3.00	0.00	0.00
	General Rate: 75.0000% of key fees							
1988 - Talented Tots	2015 Summer	Thu Jul 23-Thu Aug 13 9:30 AM-10:15 AM	Yes	4	4	3.00	0.00	0.00
	General Rate: 75.0000% of key fees							
1989 - Tiny Stars Dance	2015 Summer	Tue Jun 23-Thu Jul 16 10:15 AM-11:00 AM	Yes	4	8	6.00	0.00	0.00
	General Rate: 75.0000% of key fees							
1990 - Tiny Stars Dance	2015 Summer	Tue Jul 21-Thu Aug 13 10:15 AM-11:00 AM	Yes	4	8	6.00	0.00	0.00
	General Rate: 75.0000% of key fees							
2375 - Little Stars Summers Adventures 1 MCC Preschool Room 2/3	2015 Summer	Mon Jun 22-Fri Aug 14 9:00 AM-11:30 AM	Yes	0	0	0.00	0.00	0.00
	General Rate: 75.0000% of key fees							

Milpitas Recreation

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Milpitas, CA, 95035
(408) 586-3210

2638 - Little Stars Summer Time Learning MCC Preschool Room 2/3	2015 Summer	Mon Jun 22-Fri Jul 17 9:00 AM-11:30 AM	Yes	4	11	27.50	0.00	0.00
General Rate: 75.0000% of key fees								
2641 - Little Stars Discover/Play MCC Preschool Room 2/3	2015 Summer	Mon Jul 20-Fri Aug 14 12:30 PM-3:00 PM	Yes	4	12	30.00	0.00	0.00
General Rate: 75.0000% of key fees								
2642 - Little Stars Discover/Play MCC Preschool Room 2/3	2015 Summer	Tue Jun 23-Thu Jul 16 9:00 AM-11:30 AM	Yes	4	8	20.00	0.00	0.00
General Rate: 75.0000% of key fees								
2645 - Little Stars Summer Time Learning MCC Preschool Room 2/3	2015 Summer	Tue Jul 21-Thu Aug 13 12:30 PM-3:00 PM	Yes	4	8	20.00	0.00	0.00
General Rate: 75.0000% of key fees								
2646 - Little Stars Summers Adventures II MCC Preschool Room 2/3	2015 Summer	Mon Jun 22-Fri Aug 14 9:00 AM-11:30 AM	Yes	0	0	0.00	0.00	0.00
General Rate: 75.0000% of key fees								
2648 - Little Stars Summer Time Learning MCC Preschool Room 2/3	2015 Summer	Mon Jun 22-Fri Jul 17 9:00 AM-11:30 AM	Yes	4	11	27.50	0.00	0.00
General Rate: 75.0000% of key fees								
2651 - Little Stars Discover/Play MCC Preschool Room 2/3	2015 Summer	Mon Jul 20-Fri Aug 14 12:30 PM-3:00 PM	Yes	4	12	30.00	0.00	0.00
General Rate: 75.0000% of key fees								
2652 - Little Stars Discover/Play MCC Preschool Room 2/3	2015 Summer	Tue Jun 23-Thu Jul 16 9:00 AM-11:30 AM	Yes	4	8	20.00	0.00	0.00
General Rate: 75.0000% of key fees								

Milpitas Recreation

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Milpitas, CA, 95035
(408) 586-3210

2656 - Little Stars Summer Time Learning MCC Preschool Room 2/3	2015 Summer	Tue Jul 21-Thu Aug 13 12:30 PM-3:00 PM	Yes	4	8	20.00	0.00	0.00
General Rate: 75.0000% of key fees								
2695 - Little Stars Summer Time Learning MCC Preschool Room 2/3	2015 Summer	Mon Jul 20-Fri Aug 14 9:00 AM-11:30 AM	Yes	4	12	30.00	0.00	0.00
General Rate: 75.0000% of key fees								
2696 - Little Stars Discover/Play MCC Preschool Room 2/3	2015 Summer	Mon Jun 22-Fri Jul 17 12:30 PM-3:00 PM	Yes	4	11	27.50	0.00	0.00
General Rate: 75.0000% of key fees								
2697 - Little Stars Discover/Play MCC Preschool Room 2/3	2015 Summer	Tue Jul 21-Thu Aug 13 9:00 AM-11:30 AM	Yes	4	8	20.00	0.00	0.00
General Rate: 75.0000% of key fees								
2698 - Little Stars Summer Time Learining MCC Preschool Room 2/3	2015 Summer	Tue Jun 23-Thu Jul 16 12:30 PM-3:00 PM	Yes	4	8	20.00	0.00	0.00
General Rate: 75.0000% of key fees								
2699 - Little Stars Discover/Play MCC Preschool Room 2/3	2015 Summer	Mon Jun 22-Fri Jul 17 12:30 PM-3:00 PM	Yes	4	11	27.50	0.00	0.00
General Rate: 75.0000% of key fees								
2700 - Little Stars Summer Time Learning MCC Preschool Room 2/3	2015 Summer	Mon Jul 20-Fri Aug 14 9:00 AM-11:30 AM	Yes	4	12	30.00	0.00	0.00
General Rate: 75.0000% of key fees								
2701 - Little Stars Summer Time Learning MCC Preschool Room 2/3	2015 Summer	Tue Jun 23-Thu Jul 16 12:30 PM-3:00 PM	Yes	4	8	20.00	0.00	0.00
General Rate: 75.0000% of key fees								

Milpitas Recreation

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Milpitas, CA, 95035
(408) 586-3210

2702 - Little Stars Discover/Play MCC Preschool Room 2/3	2015 Summer	Tue Jul 21-Thu Aug 13 9:00 AM-11:30 AM	Yes	4	8	20.00	0.00	0.00

General Rate: 75.0000% of key fees

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

Instructor

Jensen School Performing Arts
Attn: Patty Jensen
1491 N. Milpitas Blvd
Milpitas CA 95035

Instructor ID:
SSN:
Home Phone:

Letter of Agreement

Contractor agrees to contact the Recreation Services three (3) working days prior to first class meeting to verify class enrollment. This agreement calls for contractor to teach the following class(es):

Activity Number - Name/Location	Season	Term	Date and Time	Primary Instructor	Instructor Role	# Weeks	# Days	# Gen. Hrs.	# Up-front Prep.Hrs.	# Ongoing Prep.Hrs.
1970 - Talented Tots	2015 Summer		Tue Jun 2-Tue Jun 23 4:30 PM-5:15 PM	Yes		4	4	3.00	0.00	0.00
General Rate: 75.0000% of key fees										
1973 - Mini Campers	2015 Summer		Mon Jun 15-Fri Jun 19 2:30 PM-3:30 PM	Yes		1	5	5.00	0.00	0.00
General Rate: 75.0000% of key fees										
1974 - Young Campers	2015 Summer		Mon Jun 15-Fri Jun 19 2:30 PM-3:30 PM	Yes		1	5	5.00	0.00	0.00
General Rate: 75.0000% of key fees										
1975 - Junior Campers	2015 Summer		Mon Jun 15-Fri Jun 19 1:00 PM-2:30 PM	Yes		1	5	7.50	0.00	0.00
General Rate: 75.0000% of key fees										
1976 - Senior Campers	2015 Summer		Mon Jun 15-Fri Jun 19 1:00 PM-2:30 PM	Yes		1	5	7.50	0.00	0.00
General Rate: 75.0000% of key fees										
1981 - Mini Fairies	2015 Summer		Mon Jul 13-Fri Jul 17 1:00 PM-2:00 PM	Yes		1	5	5.00	0.00	0.00
General Rate: 75.0000% of key fees										
1982 - Young Fairies	2015 Summer		Mon Jul 13-Fri Jul 17 2:00 PM-3:30 PM	Yes		1	5	7.50	0.00	0.00
General Rate: 75.0000% of key fees										

City of Milpitas

455 E. Calaveras Blvd., Milpitas CA 95035

Purchase Order Requisition

Page ___ of ___

Vendor Number	Recommended Supplier / Contact / Street Address	Reason For Recommendation	Ship To	Special Instructions	Department Head Approvals	Approval Date
15645	Jensen School of Performing Arts 1491 N. Milpitas Blvd.		City of Milpitas Dale Flunoy 457 E. Calaveras Blvd. Milpitas, CA 95035		[illegible]	10/4/15
	City, State & Zip Code: Milpitas, CA 95035	Telephone: 408-262-0770	Fax #			
Check box if attachments are to be sent with PO ☐	Check box to send PO to vendor ☐	Date Required:	Requested by: Dale Flunoy [signature] Ext. 3228	Date Requested:	Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project	

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	1	Class payments	$30,000.00	$30,000.00	100-170-4237
2	1	1	Pre-K Enrichment Payments	$60,000.00	$60,000.00	100-163-4237
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	

Justification Or Intended Use Of Goods or Services

Sub Total		$90,000.00
Tax		$0.00
Freight		$0.00
Total		$90,000.00

Requestor Check-off list:

Agreement Dated: _____ ☑ not applicable

Certificate of Insurance Expiration Date: _____ ☑ not applicable

City Council Approved on (for purchases over $20,000): _____* ☐ not applicable

Competitive Bidding - 3 quotes received ☐ Yes** ☐ No ☑ not applicable

Sole Source Justification form (attach) ☑ not applicable

Emergency Procurement form (attach) ☑ not applicable

(*attach Agenda & Minutes) (**attach quotes)

For Accounting Use Only

Signature Approval _____ Commodity Code: _____

CIP Budget Check _____ Ship to Code: _____

Acct. Code Check _____ PO Entered on: _____

Agreement Dated _____ PO # _____

Insurance Expires _____ Batch # _____

City Council _____ Entered by _____

Depreciable? If yes, use PO# EQ _____

Multiple Account Use PO# MA _____

Forward Original to Accounting Services, Save a copy for your records

Revised 10/6/10

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name: Mei Wan Chai, an
individual dba Center Stage Performing Arts
Address:
2415 San Ramon Valley Blvd. Suite 4393
San Ramon, CA 94538

Phone Number: (408) 707-7158

This Agreement for Recreation Services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and **Mei Wan Chai, an individual dba Center Stage Performing Arts,** ("Contractor"). This Agreement will be in effect from **July 1, 2015 through June 30, 2016**, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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.

2. Contractor No Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Milpitas Recreation Children's Theatre Program – Center Stage Performing Arts and Annual Tree Lighting Ceremony (see attached Exhibit A)**

   A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.

4. Compensation and City Cancellation Powers. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of each production as herein indicated:

   Payment Rate: **90%** of program cast fees (excluding the individual $20 non-resident fee) collected by City at the end of the production. City is not responsible for compensating Contractor for participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.

   # of productions: 4 (three productions and Annual Tree Lighting Ceremony)
   Minimum Participants (per production): 20
   Maximum Participants (per production): 80

A. In the event of a rehearsal cancellation by the Contractor resulting in a make-up rehearsal, the Contractor payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up rehearsal.

B. If a production does not reach the stated minimum number of participants prior to the first rehearsal, the City may in its sole discretion cancel the production, without compensation to the Contractor. Likewise, in the event the total number of participants drops below the minimum required production size prior to the beginning of the no-refund cancellation period as set forth in the Recreation Customer Satisfaction Policy, then the City may in its sole discretion cancel the remaining production rehearsals. In that event, the City shall pay Contractor a pro-rated amount only for those production rehearsals taught, up to the time of cancellation.

C. City will not withhold any amount for federal or state income taxes. All instructors must complete a W-9 form and shall be responsible for payment of any applicable federal or state taxes.

5. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.

6. Insurance **Insurance requirement waived.**

The City Attorney jointly with the Risk Manager (Finance Director) of the City has the authority to waive or vary any provision of Section 6. Any such waiver or variation shall not be effective unless made in writing and included in the Scope of Work attached in Exhibit A.

Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of the Workers' compensation laws of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, the Contractor will therefore not be covered under the City's Worker's Compensation Fund. Additionally, City will not obtain unemployment insurance for the Independent Contractor. Therefore, City's insurance company will not defend or pay out claims brought against an Independent contractor of City. Contractor understands that as an Independent Contractor, he/she are responsible for his/her own insurance and liability coverage. mc Contractor initials

7. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

8. Publicity and Promotion. Contractor grants full permission to the City for use of his/her name and photographs, videographs, motion pictures or recordings for any publicity and promotional purposes without charge to the City.

9. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to the first class. Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Parks & Recreation Services representative. The Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.

10. Entire Agreement. This Agreement represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

11. Indemnification. Contractor hereby indemnifies and holds harmless and releases and discharges the City of Milpitas, its officers, agents, employees, and volunteers from any and all liability for any injuries to persons or property suffered by any persons(including but not limited to contractor, contractor's employees or students) arising from or connected with this Agreement or Contractor's activities pursuant to this Agreement. Therefore, Contractor evaluated the inherent risks involved in operating his/her activity and has sufficient insurance coverage. mc Contractor initials

12. Governing Law. The laws of the State of California shall govern this Agreement.

13. Compliance with Applicable Laws. Contractor shall comply with all local, state, and federal laws, rules, regulations, policies, and guidelines.

14. Termination. City may terminate this Agreement for convenience with seven (7) days written notice to Contractor.

15. Noncompliance and Equal Opportunity. Contractor 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 participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Mei-Wan Chai	Renee Brentzen
CONTRACTOR SIGNATURE	RECREATION SERVICES
REPRESENTATIVE	
DATE JUNE 4, 2015	DATE 6/4/15

Center Stage Performing Arts
Season 2015-2016
Scope of Work - Exhibit A

Production Schedule (subject to change) updated version not available

*Shows and Dates subject to change

Fall 2015 – Seussical, Jr.

Auditions:
Monday & Tuesday, August 26 & 27, 2015
Call Backs:
Wednesday, August 28, 2015
Cast Meeting:
Thursday, August 30, 2015
Rehearsals:
August 30, 2015 – November 7, 2015
Performances:
Friday, November 8, 2015
Saturday, November 9, 2015
Sunday, November 10, 2015
Thursday, November 14, 2015
Friday, November 15, 2015
Saturday, November 16, 2015
School Performances:
Tuesday & Wednesday, November 12 & 13, 2015

Winter 2015 – The Ransom of Emily Jane

Auditions:
Tuesday & Wednesday, November 12 & 13, 2015
Cast Meeting:
Thursday, November 14, 2015
Rehearsals:
November 14 – December 8, 2015
Performances:
Monday, December 9, 2015
Tuesday, December 10, 2015
Wednesday December 11, 2015
Thursday, December 12, 2015

School Performances:
Tuesday & Wednesday, December 10-11, 2015

Annual Tree Lighting Event
Sunday, December 1, 2015

Spring 2015 – The Wiz

Auditions:
Monday & Tuesday, January 13 & 14, 2015
Callbacks:
Wednesday, January 15, 2015
Cast Meeting:
Thursday, January 16, 2015
Rehearsals:
January 16 – March 20, 2015
Performances:
Friday, March 21, 2015
Saturday, March 22, 2015
Sunday, March 23, 2015
Thursday, March 27, 2015
Friday, March 28, 2015
Saturday, March 29, 2015
School Performances:
Tuesday & Wednesday, March 25 & 26 2015

Summer 2016 – Chicago

Auditions:
Monday & Tuesday, May 5 & 6, 2016
Callbacks:
Wednesday, May 7, 2016
Cast Meeting:
Thursday, May 8, 2016
Rehearsals:
May 8 - July 17, 2016
Performances:
Friday, July 18, 2016
Saturday, July 19, 2016
Sunday, July 20, 2016
Friday, July 25, 2016
Saturday, July 26, 2016
Sunday, July 27, 2016
Thursday, July 31, 2016
Friday, August 1, 2016
Saturday, August 2, 2016

Camp Performances:
Wednesday, July 30, 2016

Center Stage Performing Arts
Season 2015-2016
Scope of Work - Exhibit A

Ticket & Concession Sales

Ticket sales are the sole responsibility of Contractor. Ticket prices and Box Office hours and staffing are to be determined by Contractor. Ticket sales will not run through City of Milpitas Recreation offices and are therefore 100% of the proceeds will go to Contractor.

The purchasing and selling of Performance Concession Sales is the sole responsibility of Contractor. Concession prices are to be determined by Contractor. Concession sales will not run through City of Milpitas Recreation offices and are therefore 100% of the proceeds go to Contractor.

Promotional Materials

Marketing
Milpitas Recreation Services will market the Center Stage Performing Arts programs provided for the City of Milpitas through the seasonal activity guide, e-blasts, press releases, flyers, marquee and website. Anything additional, i.e., paid ads, will be at the cost of Contractor.

Printing
Recreation Services will continue to create and print the programs flyers, programs and tickets in the same style and quality that has historically been created. Any promotional printing above and beyond (i.e. full color, glossy print) will be the cost of and responsibility of Contractor.

Information to create flyers, programs and tickets must be reported and communicated to staff in a timely manner and will be determined by Contractor and Milpitas Recreation Marketing Coordinator.

Facility Use

City will provide audition, rehearsal, performance and other program space as needed.

Donations

The City will continue to accept donation on behalf of Contractor should donors wish to donate to the program.

Insurance

General liability Insurance requirements have been waived jointly by the City of Milpitas' Risk Manager and City Attorney.

City of Milpitas

455 E. Calaveras Blvd., Milpitas CA 95035

Purchase Order Requisition

Page ___ of ___

Vendor Number	Recommended Supplier / Contact / Street Address	Reason For Recommendation	Ship To	Special Instructions	Department Head Approvals	Approval Date
17648	Mei-Wan Chai Center Stage Performing Arts 2415 San Ramon Valley Blvd., Suite 4393	Children's Theater Program	Dale Flunoy 457 E. Calaveras Blvd. Milpitas, CA 95035		R Jorentzen	10/4/15
	City, State & Zip Code San Ramon, CA 94583	Telephone 408-707-7158	Fax #			
Check box if attachments are to be sent with PO ☐	Check box to send PO to vendor ☐	Date Required:	Requested by: Dale Flunoy Ext. 3228	Date Requested:	Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project	

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	1	Payments for Center Stage Performing Arts Children's Theater FY 15-16	$30,000.00	$30,000.00	100-168-4237
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	

Justification Or Intended Use Of Goods or Services

Sub Total		$30,000.00
Tax		$0.00
Freight		$0.00
Total		$30,000.00

Requestor Check-off list:

Agreement Dated: _____ ✔ not applicable

Certificate of Insurance Expiration Date: _____ ✔ not applicable

City Council Approved on (for purchases over $20,000): _____* ☐ not applicable

Competitive Bidding - 3 quotes received ☐ Yes** ☐ No ✔ not applicable

Sole Source Justification form (attach) ✔ not applicable

Emergency Procurement form (attach) ✔ not applicable

(*attach Agenda & Minutes) (**attach quotes)

For Accounting Use Only

Signature Approval _____ Commodity Code: _____

CIP Budget Check _____ Ship to Code: _____

Acct. Code Check _____ PO Entered on: _____

Agreement Dated _____ PO # _____

Insurance Expires _____ Batch # _____

City Council _____ Entered by _____

Depreciable? If yes, use PO# EQ _____

Multiple Account Use PO# MA _____

Forward Original to Accounting Services, Save a copy for your records

Revised 10/6/10

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name: Bay Area Gurukul **Attention: Swati Shah**	
Address: 1306 Chewpon Ave., Milpitas, CA 95035	**Tax ID Number:** 46 - 5446717
Phone Number: (408) 942-9004	

This Agreement for Recreation Services is made by and between the City of Milpitas; a municipal corporation of the State of California ("City") and **Bay Area Gurukul**, an individual or a California corporation ("Contractor") and this Agreement will be in effect from **June 8, 2015** to **August 31, 2105**, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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.

2. Contractor Not Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Art Classes and Children's Classes** **(see attached scope of service fully incorporated herein)**

   A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.

   B. Contractor agrees to contact Recreation Services three (3) days prior to the first class meeting to verify class enrollment. If fewer than the minimum students have enrolled for the course, class status will be determined by Contractor and the designated Recreation Services Representative.

4. Compensation. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of terms as herein indicated:

   Payment Rate**: **65** % of receipts (resident rate only).

   A. Contractor shall be compensated based on enrollment totals at the end of the session. Recreation Services is not responsible for compensating Contractors participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.

   # of class meetings **1, 4, 5**
   Minimum Participants **4**
   Maximum Participants **8, 12, 15**

B. Should Contractor modify dates or times, or is tardy to a class more than two (2) times in a given session, resulting in changes to the schedule as listed in the Activity Guide, Contractor's final compensation shall be reduced by 10%.

C. In the event of a class cancellation by Contractor resulting in a make-up class, Contractor's payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up class.

D. Should Recreation Services be the cause of any class cancellation (i.e., scheduling conflict of facility or lack of building accessibility), Contractor shall be compensated for missed or re-scheduled class(es).

E. In the case that the class does not reach the stated minimum prior to the first class meeting and the class has not been previously canceled, the Contractor agrees that he/she will attend the first class meeting without compensation. If, after the first class meeting the stated minimum enrollment is still not reached, Recreation Services may, at its discretion cancel the class, or if said class is not canceled, Contractor may elect to cancel the class or conduct the class with a reduced class minimum. In the later case, compensation will be adjusted by Recreation Services.

F. Payment is for professional services and not as an hourly wage. City will not withhold from such payment any amount for federal or state income taxes. All instructors must complete a W-9 form.

5. Termination. City may terminate this Agreement at any time by providing ten (10) days written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of City, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, City at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

6. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this Agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.

7. Insurance. Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, Contractor and any employees thereof will not be covered under the City's Worker's Compensation Fund. City will also not obtain unemployment insurance for Contractor. City's insurer will not defend or pay claims brought against Contractor. Contractor understands that as an Independent Contractor, he/she is responsible for his/her own insurance and liability coverage. SJ Contractor initials.

8. Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

9. Special Risks or Circumstances. City reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

11. Permission. Contractor grants full permission to the City of Milpitas for use of his/her name and photographs, videos, motion pictures or recordings for any publicity and promotion purposes without obligation or liability to contractor.

12. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to first class. Independent Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Recreation Services representative. The Independent Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.

13. Entire Agreement. This Agreement and the incorporated attachments represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

14. Indemnification. Contractor shall defend and indemnify City and its officers, agents, employees and volunteers (collectively, "City Parties") against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens, or other liens, labor disputes, losses, damages, expenses, charges or costs, of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to this Agreement or Contractor's activities pursuant to this Agreement, including without limitation, Claims caused by the concurrent negligent act, error, or omission, whether active or passive, of City Parties. Contractor shall have no obligation to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties. For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 2782.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

15. Governing Law and Venue. The laws of the State of California shall govern this Agreement. In the event that suit shall be brought by any of the parties, the parties agree venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United State District Court, Northern District of California, San Jose, California.

16. Compliance with Applicable Laws. Contractor shall comply with all laws applicable to the performance of the work hereunder.

17. Noncompliance and Equal Opportunity. Contractor 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 participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

18. No Oral Modification. This Agreement may not be altered or amended except by a written document

executed by the parties hereto.

19. Severability. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable in any respect under any statute, rule or law of any state or of the United States of America, such unenforceability will not affect any other provision of this Agreement, but, with respect only to the jurisdiction holding the provision to be unenforceable, this Agreement will then be construed as if such unenforceable provision or provisions had never been contained herein.

20. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

CONTRACTOR:

S.J.S. Date: 06/02/2015

[Bay Area Gurukul (Swati Shah)]

CITY OF MILPITAS, CALIFORNIA

By: Renee Lorentzen Date: 6/4/15

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

Instructor

Bayarea Gurukul Attenion: Swati
Shah 1900 Chewpon Avenue
Milpitas CA 95035

Instructor ID:
SSN:
Home Phone: (408) 942-9004

Letter of Agreement

This agreement calls for you to teach the following activities:

Activity Number - Name/Location	Season	Term	Date and Time	Primary Instructor	Instructor Role	# Weeks	# Days	# Gen. Hrs.	# Up-front Prep.Hrs.	# Ongoing Prep.Hrs.
2148 - Dramatic Art Play - Parent & Me MCC Large Meeting Room	2015 Summer		Mon Jul 27-Mon Aug 31 10:00 AM-11:00 AM	Yes		6	6	6.00	0.00	0.00
General Rate: 65.0000% of key fees										
2149 - Abacus & Mind Math Champs MCC Large Meeting Room	2015 Summer		Mon Jun 15-Mon Jul 20 4:30 PM-6:00 PM	Yes		5	5	7.50	0.00	0.00
General Rate: 65.0000% of key fees										
2150 - Abacus & Mind Math Champs	2015 Summer		Mon Aug 3-Mon Aug 31 4:30 PM-6:00 PM	Yes		5	5	7.50	0.00	0.00
General Rate: 65.0000% of key fees										
2151 - Introduction to Bollywood MCC Preschool Room 1	2015 Summer		Mon Jun 15-Mon Jul 20 4:30 PM-5:15 PM	Yes		6	6	4.50	0.00	0.00
General Rate: 65.0000% of key fees										
2152 - Introduction to Bollywood MCC Preschool Room 1	2015 Summer		Mon Jul 27-Mon Aug 31 4:30 PM-5:15 PM	Yes		6	6	4.50	0.00	0.00
General Rate: 65.0000% of key fees										
2155 - Bollywood Kids MCC Preschool Room 1	2015 Summer		Mon Jun 15-Mon Jul 20 5:30 PM-6:30 PM	Yes		6	6	6.00	0.00	0.00
General Rate: 65.0000% of key fees										
2156 - Bollywood Kids MCC Preschool Room 1	2015 Summer		Mon Jul 27-Mon Aug 31 5:30 PM-6:30 PM	Yes		6	6	6.00	0.00	0.00
General Rate: 65.0000% of key fees										

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

2158 - Little Artist MCC Art Room	2015 Summer	Tue Jul 14-Tue Aug 25 9:45 AM-10:30 AM	Yes	6	6	4.50	0.00	0.00
General Rate: 65.0000% of key fees								
2159 - Young Blooming Artist MCC Preschool Room 1	2015 Summer	Tue Jun 16-Tue Jul 28 10:00 AM-11:00 AM	Yes	5	5	5.00	0.00	0.00
General Rate: 65.0000% of key fees								
2160 - Young Blooming Artist	2015 Summer	Thu Jul 30-Thu Aug 27 4:00 PM-5:00 PM	Yes	5	5	5.00	0.00	0.00
General Rate: 65.0000% of key fees								
2161 - Shikhoo Hindi MCC Preschool Room 1	2015 Summer	Wed Jun 10-Wed Jul 15 4:00 PM-5:00 PM	Yes	6	6	6.00	0.00	0.00
General Rate: 65.0000% of key fees								
2162 - Shikhoo Hindi	2015 Summer	Wed Jul 22-Wed Aug 26 4:00 PM-5:00 PM	Yes	6	6	6.00	0.00	0.00
General Rate: 65.0000% of key fees								
2164 - Fun-O-Math Level 1 MCC Small Meeting Room	2015 Summer	Thu Aug 6-Thu Aug 27 10:00 AM-10:50 AM	Yes	4	4	3.33	0.00	0.00
General Rate: 65.0000% of key fees								
2165 - Fun-O-Math Level 1	2015 Summer	Thu Aug 6-Thu Aug 27 4:10 PM-5:00 PM	Yes	4	4	3.33	0.00	0.00
General Rate: 65.0000% of key fees								
2166 - Fun-O-Math Level 2	2015 Summer	Thu Aug 6-Thu Aug 27 5:10 PM-6:00 PM	Yes	4	4	3.33	0.00	0.00
General Rate: 65.0000% of key fees								
2167 - Phonics - Level 1	2015 Summer	Fri Aug 7-Fri Aug 28 3:10 PM-4:00 PM	Yes	4	4	3.33	0.00	0.00
General Rate: 65.0000% of key fees								
2168 - Phonics - Level 2	2015 Summer	Fri Aug 7-Fri Aug 28 4:10 PM-5:00 PM	Yes	4	4	3.33	0.00	0.00
General Rate: 65.0000% of key fees								

Milpitas Recreation

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Milpitas, CA, 95035
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2170 - Calligraphy	2015 Summer	Fri Aug 7-Fri Aug 28 5:15 PM-6:15 PM	Yes	4	4	4.00	0.00	0.00
General Rate: 65.0000% of key fees								
2171 - Namaste Yoga Workshop Cracolice Dance Room	2015 Summer	Sat Jun 27-Sat Jun 27 8:30 AM-10:30 AM	Yes	1	1	2.00	0.00	0.00
General Rate: 65.0000% of key fees								
2172 - Namaste Yoga Workshop Cracolice Dance Room	2015 Summer	Sat Aug 1-Sat Aug 1 8:30 AM-10:30 AM	Yes	1	1	2.00	0.00	0.00
General Rate: 65.0000% of key fees								
2173 - Shikhoo Hindi Camp Cracolice Art Room	2015 Summer	Mon Jul 6-Fri Jul 10 9:00 AM-12:00 PM	Yes	1	5	15.00	0.00	0.00
General Rate: 65.0000% of key fees								
2174 - Yoga Camp Cracolice Art Room	2015 Summer	Mon Jul 13-Fri Jul 17 9:00 AM-12:00 PM	Yes	1	5	15.00	0.00	0.00
General Rate: 65.0000% of key fees								
2175 - Earth Science Camp Cracolice Art Room	2015 Summer	Mon Jul 20-Fri Jul 24 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2176 - Earth Science Camp Cracolice Art Room	2015 Summer	Mon Jul 20-Fri Jul 24 9:00 AM-12:00 PM	Yes	1	5	15.00	0.00	0.00
General Rate: 65.0000% of key fees								
2177 - Fusion Art Camp	2015 Summer	Mon Aug 3-Fri Aug 7 9:00 AM-12:00 PM	Yes	1	5	15.00	0.00	0.00
General Rate: 65.0000% of key fees								
2178 - Fusion Art Camp	2015 Summer	Mon Aug 3-Fri Aug 7 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2179 - Space Camp Cracolice Art Room	2015 Summer	Mon Jul 27-Fri Jul 31 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

2180 - Space Camp Cracolice Art Room	2015 Summer	Mon Jul 27-Fri Jul 31 9:00 AM-12:00 PM	Yes	1	5	15.00	0.00	0.00
General Rate: 65.0000% of key fees								
2181 - Ocean Camp Cracolice Art Room	2015 Summer	Mon Jun 8-Fri Jun 12 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2182 - Ocean Camp Cracolice Art Room	2015 Summer	Mon Jun 8-Fri Jun 12 9:00 AM-12:00 PM	Yes	1	5	15.00	0.00	0.00
General Rate: 65.0000% of key fees								
2183 - Art Camp	2015 Summer	Mon Jun 15-Fri Jun 19 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2184 - Art Camp	2015 Summer	Mon Jun 15-Fri Jun 19 9:00 AM-12:00 PM	Yes	1	5	15.00	0.00	0.00
General Rate: 65.0000% of key fees								
2185 - Drawing Camp	2015 Summer	Mon Jun 22-Fri Jun 26 9:00 AM-3:00 PM	Yes	1	5	30.00	0.00	0.00
General Rate: 65.0000% of key fees								
2186 - Drawing Camp	2015 Summer	Mon Jun 22-Fri Jun 26 9:00 AM-12:00 PM	Yes	1	5	15.00	0.00	0.00
General Rate: 65.0000% of key fees								

Milpitas Recreation

457 E. Calaveras Blvd.
Milpitas, CA, 95035
(408) 586-3210

Instructor

Bayarea Gurukul Attention: Swati
Shiv Preeti Enrichment Programs
Milpitas CA 95035

Instructor ID:
SSN:
Home Phone: (408) 957-0493

Letter of Agreement

This agreement calls for you to teach the following activities:

Activity Number - Name/Location	Season	Term	Date and Time	Primary Instructor	Instructor Role	# Weeks	# Days	# Gen. Hrs.	# Up-front Prep.Hrs.	# Ongoing Prep.Hrs.
2658 - Pre K Art Camp MCC Preschool Room 1	2015 Summer		Mon Jun 15-Fri Jun 19 9:00 AM-12:00 PM	Yes		1	5	15.00	0.00	0.00
General Rate: 70.0000% of key fees										
2659 - Pre K Art Camp MCC Preschool Room 1	2015 Summer		Mon Aug 10-Fri Aug 14 9:00 AM-12:00 PM	Yes		1	5	15.00	0.00	0.00
General Rate: 70.0000% of key fees										
2661 - Fun-O-Math MCC Preschool Room 1	2015 Summer		Mon Jun 22-Fri Jun 26 9:00 AM-12:00 PM	Yes		1	5	15.00	0.00	0.00
General Rate: 70.0000% of key fees										
2662 - Fun-O-Math MCC Preschool Room 1	2015 Summer		Mon Aug 17-Fri Aug 21 9:00 AM-12:00 PM	Yes		1	5	15.00	0.00	0.00
General Rate: 70.0000% of key fees										
2663 - Science Wiz Camp MCC Preschool Room 1	2015 Summer		Mon Jul 13-Fri Jul 17 9:00 AM-12:00 PM	Yes		1	5	15.00	0.00	0.00
General Rate: 70.0000% of key fees										
2664 - Science Wiz Camp MCC Preschool Room 1	2015 Summer		Mon Aug 24-Fri Aug 28 9:00 AM-12:00 PM	Yes		1	5	15.00	0.00	0.00
General Rate: 70.0000% of key fees										

City of Milpitas

455 E. Calaveras Blvd., Milpitas CA 95035

Purchase Order Requisition

Page ___ of ___

Vendor Number	Recommended Supplier / Contact / Street Address	Reason For Recommendation	Ship To	Special Instructions	Department Head Approvals	Approval Date
17322	Bay Area Gurukul Attention: Swati Shaw 1306 Chewpon Avenue		City of Milpitas Dale Flunoy 457 E. Calaveras Blvd. Milpitas, CA 95035		Qbrentzen	6/4/15
	City, State & Zip Code: Milpitas, CA 95035	Telephone: 408-957-0493	Fax #			
Check box if attachments are to be sent with PO ☐	Check box to send PO to vendor ☐	Date Required:	Requested by: Dale Flunoy Ext. 3228	Date Requested:	Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project	

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	1	Class payments	$20,000.00	$20,000.00	100-170-4237
2	1	1	Pre-K Enrichment Payments	$60,000.00	$60,000.00	100-163-4237
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	
					$0.00	

Justification Or Intended Use Of Goods or Services

Sub Total		$80,000.00
Tax		$0.00
Freight		$0.00
Total		$80,000.00

Requestor Check-off list:

Agreement Dated: _____ ✔ not applicable

Certificate of Insurance Expiration Date: _____ ✔ not applicable

City Council Approved on (for purchases over $20,000): _____* ☐ not applicable

Competitive Bidding - 3 quotes received ☐ Yes** ☐ No ✔ not applicable

Sole Source Justification form (attach) ✔ not applicable

Emergency Procurement form (attach) ✔ not applicable

(*attach Agenda & Minutes) (**attach quotes)

For Accounting Use Only

Signature Approval _____ Commodity Code: _____

CIP Budget Check _____ Ship to Code: _____

Acct. Code Check _____ PO Entered on: _____

Agreement Dated _____ PO # _____

Insurance Expires _____ Batch # _____

City Council _____ Entered by _____

Depreciable? If yes, use PO# EQ _____

Multiple Account Use PO# MA _____

Forward Original to Accounting Services, Save a copy for your records

Revised 10/6/10

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE AGREEMENT FOR NON-EXCLUSIVE COLLECTION, TRANSPORTATION AND RECYCLING OF DEBRIS WITH RECOLOGY SOUTH BAY, BEGINNING JUNE 16, 2015, FOR A ONE-YEAR TERM AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXTEND THE AGREEMENT A MAXIMUM OF FIVE, ONE-YEAR EXTENSIONS

WHEREAS, pursuant to and in accordance with the provisions of Title V, Chapter 200 of the Milpitas Municipal Code, Recology South Bay (hereinafter "Collector") has requested an agreement authorizing the Collector to engage in the business of collecting and disposing of non-putrescible solid waste and/or construction and demolition debris that is produced, kept, or accumulated within the city limits of Milpitas, to become effective on June 16, 2015 (hereinafter "Agreement"); and

WHEREAS, staff recommends the City Council approve the Agreement between the City and Collector, for a term period from June 16, 2015, which provides that Collector shall pay the City a sum equal to twelve (12%) percent of the total gross receipts ("franchise fees") actually collected or received by Collector or any of its subcontractors or agents under the Agreement for the collection, removal, transportation, or disposal of solid waste and/or construction and demolition debris, and provides that City shall have the right to adjust the above franchise fees at any time upon written notification to Collector; and

WHEREAS, the City shall have the sole option to extend this Agreement upon written notice and mutual consent of the parties for five (5) additional one-year (1-year) periods for a total possible extension time of five (5) years; and

WHEREAS, the City's decision as to whether to exercise an option to extend the Agreement shall lie within the discretion of the City Manager or his or her designee and, if extended, each written notice and option to extend shall specify the new termination date of the Agreement.

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

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

2. The City Council approves the Agreement for Non-exclusive Collection, Transportation, and Recycling of Debris with Collector, a copy of which is attached hereto as **Exhibit A.**

3. The City Council authorizes the City Manager or his or her designee to have the discretion as to whether to exercise the option to extend this Agreement upon written

notice and mutual consent of the parties for five (5) additional one-year (1-year) periods for a total possible extension time of five (5) years.

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

EXHIBIT A

AGREEMENT FOR NON-EXCLUSIVE COLLECTION, TRANSPORTATION, AND RECYCLING OR DISPOSAL OF NON-PUTRESCIBLE SOLID WASTE AND/OR CONSTRUCTION AND DEMOLITION DEBRIS IN THE CITY OF MILPITAS

This Agreement is made and entered into this 16th day of June, 2015, to be effective by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "City") and Recology South Bay, a California corporation (hereinafter "Collector").

WITNESSETH:

WHEREAS, pursuant to and in accordance with the provisions of Title V, Chapter 200 of the Milpitas Municipal Code (hereinafter "MMC V-200"), the Collector has requested an agreement authorizing said Collector to engage in the business of collecting and disposing of Non-putrescible Solid Waste and/or Construction and Demolition Debris that is produced, kept, or accumulated within the city limits of Milpitas; and

WHEREAS, the City Council has found that the public health, safety, and general welfare of the City and the efficient collection and removal of Solid Waste and/or Construction and Demolition Debris will be preserved and promoted by the execution of this Agreement; and

WHEREAS, performance by Collector of the terms and conditions of this Agreement shall be in strict compliance with the MMC V-200 and within the exceptions to the exclusivity of authority granted to the City's franchised hauler as set out in the agreement entered into between the City and Browning-Ferris Industries of California, Inc., dated September 2, 1986, and as amended thereafter ("Exclusive Franchise Agreement"); and

WHEREAS, Browning-Ferris Industries of California, Inc. is now operating as Republic Waste Services of North America, LLC ("Republic"), d/b/a Allied Waste Services of Santa Clara County, successor in interest to BFI Waste Systems of North America, a Delaware Corporation, both subsidiary corporations of Allied Waste Industries, Inc., a Delaware Corporation its successors and assigns.

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

1. Authority for Agreement: This Agreement is entered into pursuant to MMC V-200 and amendments thereto. The scope of services of this agreement is excepted from the exclusivity of authority granted to Republic, City's franchised hauler, as described in Section Five of the Exclusive Franchise Agreement between City and Republic. Collector acknowledges and agrees that it has received a copy of the Exclusive Franchise Agreement and understands the terms and conditions of the Exclusive Franchise Agreement, as amended.

2. Definitions: The terms "City," "Debris Box," "Person," "Premises," “Recyclables,” “Recycling,” "Solid Waste" and “Yard Trimmings” shall have the same meaning as in the MMC V-200. "Construction and Demolition Debris" shall mean debris generated from the construction, demolition, or clearing of any Premises which shall include, but is not limited to concrete, asphalt, metal, lumber, and/or any other wood or inert material. All other words shall have their common English language meaning.

3. Authority Granted: City hereby grants Collector a limited and non-exclusive authority and franchise to engage, as a Collector in the business of collecting, removing, transporting and disposing of Non-putrescible Solid Waste and/or Construction and Demolition Debris produced, kept or accumulated in the City subject to and in accordance with the provisions of this Agreement and the Exclusive Franchise Agreement as follows:

   On a non-exclusive basis, to service only those commercial establishments or residential customers who elect to use Collector and who can provide written certification, under penalty of perjury, that said establishment or customer uses the following:

   (a) Commercial temporary Debris Boxes at construction sites for collection of Construction and Demolition Debris from commencement to completion of construction including new construction and/or remodeling, renovating, rehabilitating, or demolition of existing structures and contents (see Section Five of the Exclusive Franchise Agreement).

   (b) Residential temporary Debris Boxes that shall not be located thereon for more than thirty (30) days within any sixty (60) day period and shall not be located on a public right-of-way, unless and until the owner or occupant of the Premises secures written consent from the City (see Section Five of the Exclusive Franchise Agreement).

   (c) Non-containerized hauling services, including but not limited to landscapers, tree services, and bulky item haulers.

   (d) Collection of recyclables from commercial premises, so long as (i) the transaction does not result in a payment or other consideration to the hauler of the recyclable materials, and (ii) the customer subscribes to solid waste service for the balance of its solid waste pursuant to the Exclusive Franchise Agreement and the Milpitas Municipal Code (MMC) V-200.

   (e) Collection of tallow and restaurant grease.

   (f) Collection of Yard Trimmings for Recycling from multi-family, mobile home parks, and non-residential sites.

   (g) Collection of cardboard, mixed paper, scrap metal, polystyrene, clean wood, wood pallets and circuit boards, so long as the customer subscribes to solid waste service for the balance of its solid waste pursuant to the Exclusive Franchise Agreement and MMC V-200; the recyclables listed above are separated and stored for collection by material type; the recyclables contain no residual materials; the recyclables are processed for beneficial reuse and are not disposed of in a landfill; and, the recycler maintains required City permits and licenses.

4. Disposal Obligation: Unless City shall expressly authorize otherwise, Collector shall not accumulate, dump, bury, burn, or otherwise dispose of any Solid Waste and/or Construction and Demolition Debris anywhere in the City.

   Collector shall make all reasonable efforts to avoid landfill disposal of any Construction and Demolition Debris, which efforts shall include, but shall not be limited to, recycling or reuse of Construction and Demolition Debris where commercially reasonable.

   Collector shall make every effort to accurately identify city of origin of materials when disposing at landfill.

5. Container Condition Obligation
   (a) Leak-Proof Containers: Containers shall be leak-proof. Collector shall take corrective action and exchange containers within one (1) business day upon verification of reported container(s) leakage.

   (b) Graffiti: Container shall display only business-related information (name of company and phone number). Collector shall take corrective action and exchange/abate containers within three (3) business days upon verification of reported graffiti on container(s).

6. Compensation to City: Collector shall pay to City as compensation for the authority herein granted, a sum equal to twelve (12%) percent of the total gross receipts actually collected or received by Collector or any of its subcontractors or agents for the collection, removal, transportation, or disposal of Solid Waste and/or Construction and Demolition Debris produced, kept or accumulated within City under this Agreement. City shall have the right to adjust the above franchise fees at any time, upon written notification to Collector.

7. Verification: In order that City may verify that compensation amounts paid are in accord with this Agreement, City shall have the right to inspect all relevant documents and records of Collector at Collector's place of business upon 24 hours advance notice. By such right of inspection, said documents and records shall not become Public Records or be subject to greater inspection rights by the public or third parties than would otherwise exist.

8. Timing of Payments: Payments to City of said compensation shall be made by Collector in accordance with MMC V-200-5.30.

9. Prohibited Interest: No member, officer, or employee of City shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

10. Equal Employment Opportunity: Collector shall not discriminate against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, age, physical or mental disability, medical condition, marital status, or denial of family care leave.

11. Compliance with Laws: Collector shall comply with all current federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative body or tribunal in any manner affecting the performance of this Agreement.

12. Indemnity: Collector agrees to indemnify, save and hold harmless City, its officers, agents, volunteers and employees, from any and all costs, expenses, claims, liabilities, or damages to persons or property arising out of or in any way connected with the intentional or negligent act, performance or omission of the Collector, its officers, employees, agents, contractors, subcontractors, or any officer, agent, or employee thereof related to this Agreement.

13. Insurance

13.1 Commercial Liability Insurance. Collector agrees to maintain and pay for a commercial liability policy naming City, its officers, officials, agents, and employees as an additional insured and insuring them against liability or financial loss resulting from injuries occurring to persons or property in or about or in connection with said work to be performed under this Agreement. Each policy of insurance shall provide primary coverage on an occurrence basis in a company satisfactory to City in the following minimal amounts: personal injury, $1,000,000 for each person and $1,000,000 per occurrence; property damage, $1,000,000 per occurrence. Each policy shall provide that it shall not be canceled or reduced in coverage without 30 days prior written notice to City. The commercial liability policy shall provide (a) if City, its officers, officials, agents, or employees have other insurance against loss covered by said policy, said other insurance shall be excess insurance only, and (b) that City, its officers, officials, agents, and employees are not precluded from claim under said policy against other insured parties.

Collector shall file Certificates of Insurance with City in a form satisfactory to the City Attorney upon execution of this Agreement, evidencing said coverage and the requirements of this paragraph.

13.2 Automobile Liability Insurance: Collector, at its own cost and expense, shall maintain 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 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 there from, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

13.3 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.

13.4 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, officials, agents, and employees shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Collector, including the insured's general supervision of Collector; products and completed operations of Collector; premises owned, occupied, or used by Collector; and automobiles owned, leased, or used by the Collector. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, officials, agents, and employees.

(b) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

(c) An endorsement must state that coverage is the primary insurance with respect to the City and its officers, officials, agents, and employees, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

(d) Any failure of Collector to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, officials, agents, and employees.

(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 to written notice by certified mail, return receipt requested, has been given to the City.

14. Workers' Compensation: Collector 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, Collector 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 Collector, 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.

15. City Representative: The City Manager, or his/her designee, shall represent City in all matters pertaining to the services to be rendered under this Agreement. All requirements of City pertaining to the services and materials to be rendered under this Agreement shall be coordinated through said City Representative.

16. Collector Representative: Collector shall designate a representative to serve as the authorized contact to the City in all matters pertaining to the service and materials to be rendered under this Agreement. All requirements of Collector pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the Collector Representative.

17. Reports and Records: Collector shall maintain all books, records, or documents related to the performance of this Agreement for a minimum period of five (5) years. Additionally, books and records shall be kept and maintained by Collector and statements and reports shall be given and made by Collector to City as required by the following schedule:

QUARTER	**DEADLINE**
January 1 – March 31	April 25
April 1 – June 30	July 25
July 1 – September 30	October 25
October 1 – December 31	January 25

The report shall include the total gross billing during that month to all customers and the total of Solid Waste and/or Construction and Demolition Debris collected, by weight and volume, and by customer type (i.e., commercial and residential customers) and by disposal facility where said material was disposed or recycled. City Manager and his/her designee shall approve the format and detail of Collector's reporting system, which approval shall not be unreasonably withheld.

City shall have the right at all times during the term of this Agreement and any extension thereof, with reasonable notice, to inspect any and all of Collector's records, including individual billings for individual customers, which pertain to the duties of the Collector under the terms of this Agreement.

18. Term of Agreement: This Agreement shall commence on June 16, 2015 and automatically expire on June 15, 2016, unless terminated sooner by City; provided the City shall have the sole option to extend this Agreement upon written notice and mutual consent of the parties for five (5) additional one-year (1-year) periods for a total possible extension time of five (5) years. The decision as to whether to exercise an option to extend this Agreement shall lie within the discretion of the City Manager or his or her designee. Each written notice and option to extend shall specify the new expiration date of this Agreement.

19. Manner of Collection, Hours of Collection: In collecting or removing any Non-putrescible Solid Waste and/or Construction and Demolition Debris from any Premises, Collector shall exercise reasonable care to refrain from dropping or spilling any Non-putrescible Solid Waste and/or Construction and Demolition Debris upon any Premises or upon any public property or place; and the Collector shall without delay, pick up and remove from any Premises or public property or place any Non-putrescible Solid Waste and/or Construction and Demolition Debris dropped or spilled by it upon any such Premises, property or place. The Collector shall refrain from making unnecessary noise. For the protection of City streets, Collector shall limit the weight of each vehicle including its contents, to 20,000

pounds per axle. No material of any kind shall be collected or removed from any Premises in the City except between the hours of 7:00 a.m. and 7:00 p.m.

20. Termination of Services: Without limitation to such rights or remedies as City shall otherwise have by law, City shall also have the right to terminate this Agreement for any reason upon written notice to Collector.

21. Notices: Unless otherwise provided herein, all notices required hereunder shall be given by certified mail, postage prepaid and addressed to the party at the address indicated below, however, that in lieu of thereof, notice may be given by personal delivery to the party at said address.

To the Collector:	Recology South Bay 650 Martin Avenue Santa Clara, CA 95050 Attn: Melinda Harris
To the City:	City of Milpitas Attn: Elizabeth Koo, Utility Engineering 455 E. Calaveras Blvd. Milpitas, CA 95035

22. Liquidated Damages: City may assess Liquidated Damages for the following material breaches, and for the following amounts, where the material breach by Collector occurs without reasonable cause:

    (a) For each failure to submit the monthly reports, fifty dollars ($50.00) for each business day the report is late;

    (b) For each failure (in excess of five (5) times per calendar year) to clean up materials spilled from containers or trucks within two (2) business days after notification by City or Customer -- one hundred dollars ($100.00).

    For the purposes of this subsection, "reasonable cause" shall include, but is not limited to Collector's inability to perform its obligations due to circumstances beyond its reasonable control, including (i) vehicle or collection equipment breakdown which occurs despite regular maintenance, (ii) data processing equipment or software breakdown if backup systems are not reasonably available, (iii) inability to obtain necessary information for report filing beyond its reasonable control.

    Upon making a determination to impose Liquidated Damages, City shall notify Collector of its determination in writing.

23. Entire Agreement: Amendment: This writing constitutes the entire Agreement between the Parties. No modification hereof shall be effective unless such modification is in writing and signed by all parties to this Agreement.

24. Miscellaneous: All covenants herein shall be conditions. Time shall be of the essence. Failure on the part of either party to enforce any provision of this Agreement shall not be

construed as a waiver of the right to compel enforcement of such provision or any other provision. The singular number shall include the plural, and the masculine gender shall include the feminine and neutral genders whenever the context of this Agreement permits.

25. Applicable Law: The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.

26. Assignment: Neither party shall assign nor sublet any portion of this Agreement without the written consent of the other party.

27. Venue: In the event that suit is brought by either party to this Agreement, the parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

CITY OF MILPITAS

_____

Thomas C. Williams, City Manager

COLLECTOR

_____

John Zirelli, General Manager

APPROVED AS TO FORM:

_____

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

_____

Steven J. Machida, Director of Engineer

*23

CITY OF MILPITAS
ENGINEERING DIVISION
BID SUMMARY

Project Name: 2014 Soundwall Renovation Project
Project No. : 4267
Bid Date: May 13, 2015 at 2:00 PM

BASED BID				**Engineer's Estimate**		**OnPoint Construction**		**2**		**3**	
ITEM	**DESCRIPTION**	**Qty.**	**UNIT**	**Unit Cost**	**Extension**	**Unit Cost**	**Extension**	**Unit Cost**	**Extension**	**Unit Cost**	**Extension**
1	Mobilization	1	LS	$20,000.00	$20,000.00	$25,000.00	$25,000.00		$0.00		$0.00
2	Traffic Control	1	LS	$5,000.00	$5,000.00	$15,500.00	$15,500.00		$0.00		$0.00
3	Water Pollution Control	1	LS	$12,000.00	$12,000.00	$5,800.00	$5,800.00		$0.00		$0.00
4	Temporary Shoring and Bracing	1	LS	$13,000.00	$13,000.00	$11,000.00	$11,000.00		$0.00		$0.00
5	Crack Repair - Epoxy Crack Injection, Jacklin Rd./Hillview Dr.	1	LS	$23,000.00	$23,000.00	$63,700.00	$63,700.00		$0.00		$0.00
6	Joint Sealing Jacklin Rd./Hillview Dr.	1	LS	$33,000.00	$33,000.00	$13,800.00	$13,800.00		$0.00		$0.00
7	Plaster Finish Jacklin Rd./Hillview Dr.	1	LS	$18,000.00	$18,000.00	$36,500.00	$36,500.00		$0.00		$0.00
8	Concrete Excavation, Cutting, Removal, Surface Preparation Jacklin Rd./Hillview Dr. Includes Sections E-13, E-14, & E-16	1	LS	$55,000.00	$55,000.00	$27,000.00	$27,000.00		$0.00		$0.00
9	Painting Jacklin Rd./Hillview Dr.	1	LS	$24,000.00	$24,000.00	$63,527.00	$63,527.00		$0.00		$0.00
10	Deferred Submittal and Building Permit Del Rio Court	1	LS	$12,000.00	$12,000.00	$8,000.00	$8,000.00		$0.00		$0.00
11	Existing Wall Demolition Del Rio Court	1	LS	$60,000.00	$60,000.00	$45,000.00	$45,000.00		$0.00		$0.00
12	Del Rio Court Soundwall Includes Sections E-17, E-18, E-19 & E-20	1	LS	$100,000.00	$100,000.00	$280,000.00	$280,000.00		$0.00		$0.00
	TOTAL				$375,000.00		$594,827.00		$0.00		$0.00

List of Sub-Contractors

	Description	**Sub-Contractor**		
1	Traffic Control	Trench Plate Rental Co./Traffic Solutions		
2	Storm Water Services	Verux		
3	Concrete	Printex Concrete		

List of Attachments for Item No. 24

– RMC Agreements

Attachments:

24-A	Consultant Agreement for Recycled Water Pipeline Extension / Grant
24-B	Consultant Agreement for Augustine Park and Community Garden Conversion
24-C	Amendment No. 2 for Utility Backfill Support
24-D	Budget Change Form (BCF)

Project Name: Recycled Water Pipeline Extension Date: 6-16-15

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
RMC WATER & ENVIRONMENT, INC.

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a Municipal Corporation of the State of California (hereafter referred to as "CITY") and RMC Water & Environment, Inc., a California Corporation (referred to herein as the "Consultant") as of June 16, 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 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 a guaranteed maximum price not to exceed Four Hundred Eighty Two Thousand Seven Hundred Ninety Two Dollars ($482,792.00) 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 **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 Ten Thousand dollars ($10,000.00) under the Agreement, unless pre-approved in writing by the City. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. **FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. **INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or

an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits,

except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 **Requirements for All Policies.**

4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and

endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 **Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. **STATUS OF CONSULTANT.**

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so

adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 **No Implied Waiver of Breach**. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by City Engineer who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Steve Bui
RMC Water and Environment
100 West San Fernando Street, Suite 320
San Jose, CA 95113

Any written notice to City shall be sent to:
Steven Machida, Director of Engineering
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

_____

Thomas C Williams, City Manager

APPROVED AS TO FORM:

_____

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

_____

Steven J. Machida, Director of Engineering

CONSULTANT

_____

Taxpayer Identification Number

_____

EXHIBIT A

SCOPE OF SERVICES FOR RECYCLED WATER PIPELINE EXTENSION

This Project is a part of the City's efforts to respond to the ongoing drought by offsetting potable water and raw water used with recycled water. The proposed work includes conceptual design, environmental compliance documentation, and Proposition 1 funding application services for the Recycled Water Expansion Evaluation Project (Project). The Project involves the evaluation of five (5) phases extending the existing recycled water system easterly across I-680 to serve two golf courses, a commercial quarry, Ed Levin Park, a standpipe to serve the Cal Fire and Spring Valley Volunteer Fire Departments, landscaping for several schools and parks, and general Home Owners Association landscaping. The Project also includes coordination with potential future customers, City staff, South Bay Water Recycling (SBWR), and the State Water Resources Control Board Division of Drinking Water (DDW). Finally, the Project includes preparation of a CEQA-Plus document and Proposition 1 funding application.

Task 1: Project Management

Consultant will prepare monthly invoices, manage subconsultants, and coordinate with the City's Project manager. Consultant will monitor its activities against the Project schedule and track expenditures and progress against the scope of work. The budget includes project management for eight months.

Task 1 Deliverables:

Monthly invoice, progress report, and budget table.

Task 2: Coordination with Potential Phase 3 Customers

In support of the City's ongoing communication efforts with the golf courses, Consultant will assist with potential Phase 3 customer coordination including:

- Prepare for and participate in up to two (2) two-hour face-to-face meetings per customer for each of five (5) identified potential Phase 3 customers (for a total of up to ten (10) two-hour meetings) plus coordination time (e.g., scheduling, preparing materials and minutes, etc.).
- Prepare for and participate in up to two (2) two-hour face-to-face meetings with City staff to coordinate the conversion of potential Phase 3 customers to recycled water.
- Coordination with SBWR and DDW via telephone and email to obtain input on the preliminary alignment and potential Phase 3 conversions to ensure there are no fatal flaws with respect to permitting.

Consultant assumes that the City will provide contact information for the five potential Phase 3 customers, SBWR, and DDW.

Task 2 Deliverables:

- Meeting materials, agenda and minutes for each of the potential customer meetings.
- Meeting materials, agenda and minutes for each of the two meetings with City staff.

Task 3: Alignment, Storage, and Pump Station Siting Study Technical Memorandum

Task 3.1 Alignment Study

Consultant will conduct an alignment study for Phases 2, 3, 4, and 5. As part of this study, Consultant will evaluate pipeline alignment alternatives to the point of connection at each customer site as identified in the City's potential customer list (Attachment 1).

The alignment study will include evaluation/preparation of the following:

- Planning-level design and construction cost estimate per Phase (right-of-way costs not included);
- Operations & Maintenance considerations;
- Constructability (risk);
- Impacts to the local environment;
- Easement/right-of-way identification;
- Schedule for connecting to recycled water supply;
- Construction impacts on traffic;
- Permitting support needs for the main pipeline (i.e., not for service laterals or on-site connections);
- GIS generated map for each Phase (a total of 4 maps);
- Field verification of the meter locations for potential customers identified in Attachment 1; and
- Field verification of the feasibility of alignment alternatives.

This task includes four (4) five-hour site visits (generally, one site visit per Phase) for up to two (2) Consultant staff to perform field verifications. Findings of the Alignment Study will be presented in the Technical Memorandum, prepared under Task 3.4.

Consultant assumes the following:

- A total of nine alignments will be studied.
  - Phase 1 will not be included in the Alignment Study as it is currently under design as part of the Dempsey Project. For completeness, a brief summary of Phase 1 will be included in the TM.
  - Phases 2, 4, and 5 will each include up to two (2) alignments to be studied.
  - Phase 3 will include up to three (3) alignments to be studied, two of which will include the City-defined Old Calaveras Road and Country Club Road alignments.
- Right-of-way acquisition support beyond identifying potential right-of-way requirements is not included in this Scope of Work.
- Access to potential customer sites for meter verification (Attachment 1) is available for site visits without property-owner coordination or accompaniment.
- The City will provide right-of-way cost estimates.

- City's hydraulic modeling consultant will provide Consultant with hydraulic capacity and pipe size required for each alignment.

Task 3.2 Phase 3 Storage Recommendations

Consultant will provide recommendations for storage (i.e., tanks and reservoirs) on the hillside and specifically address the feasibility of Sandy Wool Pond as a potential storage reservoir. Recommendations will be presented in the Technical Memorandum, prepared under Task 3.4.

Consultant assumes the following:

- City's hydraulic modeling consultant will provide the necessary size(s) of the storage reservoir(s).
- The City will provide the purpose of the storage prior to Consultant beginning the recommendation process (i.e., for hillside customer storage or for system-wide operational storage).
- Meetings needed to discuss storage options with potential customers are included in Task 2.

Task 3.3 Phase 3 Pump Station Siting Study

Consultant will complete a siting study for potential Phase 3 pump station locations, including the following:

- Anticipated space requirements and identification of sites with adequate space;
- Identification of sites with appropriate access; and
- Community and local environmental impacts of each potential pump station site (e.g., noise, traffic, etc.).

This task includes one four (4) hour site visit for up to two (2) Consultant staff to field verify the potential site(s). Findings of the Pump Station Siting Study will be presented in the Technical Memorandum, prepared under Task 3.4.

Consultant assumes the following:

- Up to three (3) potential pump station sites will be studied.
- The pump stations will be submersible pumps with above-grade controls similar to the Country Club Pump Station (on the City's potable water system).
- City's hydraulic modeling consultant will provide pump station hydraulics including suction pressure, discharge head and flow.

Task 3.4 Technical Memorandum – Alignment, Storage, and Pump Station Siting Study Findings

Consultant will compile a TM summarizing the findings of Tasks 3.1 – 3.3. In addition, the TM will include:

- An outline of implementation steps (e.g., design, permitting, cross-connection test, etc.); and
- Preliminary implementation schedule.

Consultant assumes that the City review period for the draft Alignment, Storage, and Pump Station Siting Study Findings TM will be no more than two (2) weeks.

Task 3.5 Technical Memorandum – Cost-Sharing Analysis

Consultant will prepare a TM summarizing the effort required to complete the alignment study, pump station siting study, and conceptual design outlined in Tasks 2 – 3.4 and to analyze the amount of potential cost-sharing to be incurred by each Project partner and for each phase.

Consultant assumes the following:

- Entities that are potential City of Milpitas partners to be included in the TM: Santa Clara Valley Water District (SCVWD), Caltrans, Milpitas Unified School District, Santa Clara County and the two hillside golf courses.
- The City review period for the draft Cost-Sharing Analysis TM will be no more than two (2) weeks.

Task 3 Deliverables:

- Draft Technical Memorandum – Alignment, Storage, and Pump Station Siting Study Findings (.docx format).
- Final Technical Memorandum – Alignment, Storage, and Pump Station Siting Study Findings (.pdf format).
- Draft Technical Memorandum – Cost-Sharing Analysis (.docx format)
- Final Technical Memorandum – Cost-Sharing Analysis (.pdf format)

Task 4: CEQA-Plus

Consultant will prepare a Mitigated Negative Declaration (MND) for the Project in compliance with the California Environmental Quality Act (CEQA). Consultant recommends including federal cross-cutting analysis in the MND, often referred to as "CEQA-Plus" documentation, which provides the City with streamlined CEQA clearance should federal or State Revolving Fund (SRF) financing be sought for construction. In order to meet the City's schedule, this scope of work assumes that all five phases of the recycled water expansion will be included in the "project" evaluated under CEQA. The work will be completed under the following tasks.

Task 4.1 Project Description and Initial Study

Consultant will prepare a Project description suitable for CEQA compliance based on Task 3 findings as development of the technical memorandum progresses. An electronic copy of the Project description will be provided to the City for review. Once the City has approved the Project description, Consultant's team will conduct a site reconnaissance visit to identify existing land uses and environmental conditions within the Project area.

Consultant will prepare an Initial Study in compliance with Appendix G of the CEQA Guidelines that identifies the potential environmental impacts of the Project, including brief supplemental comments which concisely describe those impacts and identify where mitigation is necessary. The Initial Study will be organized by CEQA resource category and impacts will be identified for each Project component. This scope of work assumes that completion of an Initial Study will result in the conclusion that an MND is the appropriate CEQA compliance document for the proposed Project.

If the Initial Study results determines that additional environmental review and an Environmental Impact Report is required, the parties will meet and discuss how best to move forward.

Due to the location of the Project being within existing disturbed areas and primarily within existing streets, detailed analysis is not expected to be necessary to support the conclusion that the Project would not have significant impacts on aesthetics (i.e., Project-specific renderings of pump stations are not included in the scope), recreation, utilities and service systems, public services, energy, geology and soils, hydrology and water quality, mineral and energy resources, or agricultural resources. Issues of concern will be evaluated in greater detail. Impacts associated with air quality and traffic are expected to be largely confined to the construction period, and short-term traffic impacts would be treated as less than significant with incorporation of standard mitigation such as a traffic control plan. It is assumed that pump stations can be sited and designed so as to avoid issues with land use compatibility and operational noise impacts on any nearby sensitive receptors. Consultant assumes that up to three potential pump station locations studied in Task 3.3 will be included in the environmental studies.

Task 4.2 Environmental Investigations

Consultant's subconsultant (Rincon Consultants) will prepare a stand-alone Biological Resources Assessment that identifies and assesses potential impacts to biological resources from the Project. Preparation of the Biological Resources Assessment will include general site surveys to characterize vegetation and sensitive species that may occur adjacent to Project facilities. This scope assumes that identification of potential special-status species habitat is based on a suitability analysis level and does not include definitive surveys for the presence or absences of species that may be present. The Biological Resources Assessment will evaluate the Project's compliance with state and federal biological resource regulations. For the purposes of this scope and fee estimate, Consultant assumes that there are no major biological issues along the alignments. If further studies are determined to be necessary to address special-status biological resources that are identified onsite, Consultant is prepared to coordinate with the City of Milpitas and applicable regulatory agencies to determine additional requirements; those further studies and coordination are not included as part of this scope and fee estimate.

Consultant's subconsultant (Rincon Consultants) will prepare a stand-alone Cultural Resources Assessment that identifies and assesses potential impacts to archeological, paleontological, and historical resources from the Project. Preparation of the Cultural Resources Assessment will include pedestrian surveys to determine the potential occurrence of archeological and cultural resources adjacent to Project facilities. The cultural resources analysis will include an analysis of all the alternative alignments, and a 0.5-mile radius around the alignments per eligibility requirements for SRF funding. For the purposes of this scope and fee estimate, Consutlant assumes that the pedestrian survey will not identify any cultural resources that require recordation or updating. Should any cultural resources be identified during the survey, the budget would need to be augmented to record or update the resources. No subsurface testing will be conducted, nor will any artifacts, samples, or specimens be collected during the survey. A separate Section 106 Format Technical Report for use in National Historic Preservation Act consultation will be prepared. This scope assumes that minimal coordination with applicable federal agencies will take place as part of the Section 106 analysis.

Consultant will complete a stand-alone General Conformity Report for the Clean Air Act which addresses construction and operational air quality emissions in accordance with federal standards.

Consultant assumes that the new pump station will consist of underground submersible pumps with control panels above grade. As such, a separate aesthetic analysis will not be conducted.

The MND will also identify necessary permits with other State and local public agencies that might be affected by the Project. This scope assumes that the City of Milpitas will be responsible for securing permits, easements, and any other agreements necessary to move the Project forward.

Findings from the Biological Resources Assessment, Cultural Resources Assessment, and General Conformity Report will be incorporated into the MND. An electronic copy of the Administrative Draft MND will be provided to the City for review.

Task 4.3 Prepare Public Draft MND and Notices

Consultant will respond to comments received from City staff and revise the Administrative Draft MND accordingly for review as the Screencheck Draft MND. An electronic copy of the Screencheck Draft MND will be provided to the City for review. Consultant will respond to final comments received from City staff and finalize the Screencheck Draft MND accordingly for release as the Public Draft MND. This scope of work assumes that City comments received on the Screencheck Draft MND will be limited to editorial and formatting changes, not new substantive analysis. An electronic copy and up to 10 hard copies of the Public Draft MND will be provided to the City.

Consultant will prepare a draft Notice of Intent (NOI) to adopt an MND in accordance with CEQA Guidelines §15072. Consultant will work with the City to identify the list of interested parties and responsible agencies who will receive the NOI. Consultant will finalize and publish the NOI in the newspaper and will be responsible for reproduction and distribution of the NOI to interested parties, responsible agencies, the County Clerk, and the State Clearinghouse.

Task 4.4 Prepare Final MND, Mitigation Plan, and Notices

Following receipt of public comments, Consultant will develop a matrix of comments received and recommended responses. As necessary and directed by the City, Consultant will revise the Public Draft MND based on comments received during the public review period. An electronic copy of the Public Draft MND will be provided to the City. This scope of work assumes that the Final MND revisions will not result in identification of significant environmental effects and thus will not require recirculation of the document. If level of effort for responses to comments exceed that estimated in the budget Consultant will submit a request for amendment of scope and budget.

Consultant will prepare a Mitigation Monitoring and Reporting Program (Monitoring Plan) that contains the measures that are required as conditions of Project approval to avoid or reduce potential environmental impacts to less-than-significant levels. For any significant impact identified in the MND, the Monitoring Plan will describe the required mitigation, the tasks and schedule necessary for monitoring compliance, and the entity responsible for each monitoring and reporting task. An electronic copy of the Draft Monitoring Plan will be provided to the City for review. Consultant will respond to comments received from the City and revise the Monitoring Plan accordingly. An electronic copy of the Final Monitoring Plan will be provided to the City.

Consultant will prepare a draft Notice of Determination (NOD) following approval of the Project, in accordance with CEQA Guidelines §15075. Following City review, Consultant will finalize and transmit the NOD to the County Clerk and State Clearinghouse.

Task 4.5 Communications and Presentations

Consultant will prepare for and attend up to four (4) Project meetings with the City at key points throughout the Project. The meetings are anticipated to include the following:

- To receive City comments on the Administrative Draft MND (staff meeting)
- To discuss public comments received on the Public Draft MND (staff meeting)
- To present the Final MND and Monitoring Plan to the Planning Commission
- To present the Final MND and Monitoring Plan to the City Council

Consultant will prepare an agenda and meeting notes for each staff meeting and presentations for the Planning Commission and City Council meetings. At a minimum, Consultant's CEQA task lead will attend each meeting. It is assumed that other Project coordination can occur via email and conference calls, which may also include web-based presentations.

Task 4 Deliverables

- Draft and final Project Description (.pdf files)
- Draft and final Biological Resources Assessment (.pdf files; Hard copies as appendix to Public Draft MND)
- Draft and final Cultural Resources Assessment (.pdf files; Hard copies as appendix to Public Draft MND)
- Draft and final General Conformity Report (.pdf files; Hard copies as appendix to Public Draft MND)
- Administrative Draft MND for City review (.pdf files)
- Screencheck Draft MND for City review (.pdf files)
- Draft and final Notice of Intent (.pdf files; Hard copies mailed to interested parties, responsible agencies, County Clerk, and State Clearinghouse)
- Public Draft MND and cover letter to the State Clearinghouse for City reproduction and distribution (Microsoft Work and/or .pdf files and up to 10 hard copies)
- Final MND for City approval and certification (.pdf files and up to 10 hard copies)
- Draft and final Monitoring Plan (.pdf files)
- Draft and final Notice of Determination (.pdf files; Hard copies mailed to County Clerk and State Clearinghouse)

Task 5: Proposition 1 Funding Application and Coordination

Consultant will prepare an application for funding/financing under the Proposition 1 Water Recycling Funding Program (WRFP), administered by the State Water Resources Control Board's Division of Financial Assistance. This scope of work assumes that the application will be generally similar to the existing State Revolving Fund applications as suggested by the draft WRFP Guidelines that are currently available.

Task 5.1 Kickoff and Review Existing Documents

One (1) two-hour kick-off meeting with City staff will be conducted to collect information necessary for the WRFP application. Consultant will prepare an agenda and meeting notes for the staff meeting. It is anticipated that phone calls with City staff will be adequate during preparation of the draft WRFP application and when responding to comments. This task involves a review of existing documents and available background information provided by the City on the Project.

Task 5.2 Prepare Project Report and Technical Package

The majority of the information required for the Project Report is contained in the Technical Memorandum being prepared under Task 3. Consultant will compile the following information in the Project Report format:

- Study area characteristics.
- Water supply characteristics and facilities.
- A cost-effectiveness evaluation of alternative Project concepts.
- An estimate of the total capital costs and annual operation and maintenance costs.
- A map of the service area.
- A written record of the required public meeting. A noticed public meeting is required to obtain public comment on the proposed Project and to discuss financial and environmental factors related to the Project.
- Documentation showing that the applicant has the legal, institutional, managerial, and financial capability to construct the proposed Project and to operate and maintain the Project facilities throughout their service life.
- A discussion of the selected alternative that includes the following:
  - A detailed description of the selected alternative.
  - A statement of the relevant design criteria.
  - The estimated construction cost and annual operation and maintenance cost, and a description of how the local costs will be financed.
  - Dedication of an identified source of revenue to repay the loan (Required for loans only).
  - A discussion of the water quality and other non-monetary benefits of the Project.
  - A discussion of any interagency service agreements necessary to construct, operate, and maintain the system.
- An implementation schedule for completion of the Project.

Consultant will complete an Initial Study on the Project alignment(s) and pump station site(s) under Task 3. Consultant assumes that up to three potential pump station locations (identified in Task 3.3) will be included in the environmental studies.

An electronic copy of a draft Project Report will be provided to the City for review and comment. Consultant will complete the necessary forms, compile it with the Project Report, and provide a review copy for the City. Following incorporation of comments received, an electronic copy of the final Technical Package will be submitted via FAAST (State Water Resources Control Board's online submittal website) to the State Water Resources Control Board (SWRCB). Consultant will

also help the City in responding to any comments and questions received from the SWRCB staff on the Technical Package.

Task 5.3 Prepare Environmental Package

The majority of the information required for the Environmental Package is contained in the MND being prepared under Task 4. Consultant will complete the necessary forms, compile it with the MND, and provide a review copy for the City. Following incorporation of comments received, an electronic copy of the final Environmental Package will be submitted via FAAST to SWRCB. Consultant will also help the City in responding to any comments and questions received from the SWRCB staff on the Environmental Package.

Task 5.4 Assist with Financial Assistance Package

Consultant will assist the City with preparing the Financial Assistance Package, using financing information and required certificates provided by the City. Consultant's work in Task 3 will provide up-to-date planning-level cost estimates for planning, construction, design, utility relocation, engineering services during construction, contingencies, and additional cash flow needs. Consultant will compile all of the provided materials into a complete Financial Assistance Package.

Consultant will complete the necessary forms, compile forms with the materials provided by the City, and provide a review copy for the City. Following incorporation of comments received, an electronic copy of the final Financial Assistance Package will be submitted via FAAST to SWRCB. Consultant will also help the City in responding to any comments and questions received from the SWRCB staff on the Financial Assistance Package.

Task 5 Deliverables

- Agenda and notes for kickoff meeting
- Draft and final Project Report (.pdf files)
- Draft and final Technical Package (.pdf files)
- Draft and final Environmental Package (.pdf files)
- Draft and final Financial Assistance Package (.pdf files)

Task 6: Optional Services

Task 6.1 State Revolving Fund Packaging

As stated in Task 5, Consultant assumes that the WRFP application will be generally similar to the existing SRF applications as suggested by the draft WRFP Guidelines that are currently available. This optional services task provides additional budget for preparation of a SRF application package beyond the currently anticipated level of effort. The SRF package would be prepared by repurposing the documents prepared in Tasks 3, 4, and 5 for the Proposition 1 funding application.

Task 6.2 Additional Meetings and Coordination

Consultant assumes that ten (10) potential customer meetings and two (2) City meetings will be required under Task 2 to provide Customer Coordination services. This Optional Services Task provides additional meeting and coordination budget for unanticipated meetings.

Consultant assumes that no more than ten (10) additional 2-hour meetings will be required of the Principal-in-Charge, Project Manager, and the Technical, CEQA, and Funding leads.

Task 6.3 Customer Coordination, Service Condition Analysis, and Water Quality Evaluation
As an optional additional service related to Task 2, Consultant will coordinate with potential Phase 3 customers, conduct potential customer site visits, determine service conditions, and complete a water quality evaluation for the potential Phase 3 customers. In addition, Consultant will assist the potential Phase 3 customers with evaluating if they can remove turf for additional water savings.

Consultant will analyze the water use profile for the five identified potential Phase 3 customers from Task 2 including the following:

- Conduct site visits. Site visits assume one (1) two-hour visit per potential Phase 3 customer site with two (2) Consultant team members in attendance;
- Evaluate existing water services and meters and service areas (e.g., restaurants, restrooms, greens, ponds, etc.); and
- Create a figure showing existing meters and water uses, including size of existing pipes and meters.

Consultant will analyze non-potable use, conversion requirements and service conditions for the five identified potential Phase 3 customers including the following:

- Determine Non-Potable Service Conditions for each of the five potential Phase 3 customers by completing the following:
  - Analyze water quality needs including assisting the golf courses in determining if they want to incorporate on-site deionization if recycled water quality is an issue;
  - Determine the minimum pressure required to serve the golf courses non-potable needs;
  - Analyze storage requirements;
  - Develop design considerations for crossing the Hayward Fault including recommended pipe materials, joint types, and isolation valves per the City's seismic design criteria.
- Analyze the requirements for conversion of each potential Phase 3 customer site to recycled water including:
  - Systems and appurtenances to be converted to recycled water;
  - Necessary improvements to the existing domestic and fire water systems (e.g., backflow prevention, break tanks, piping, pumps, check valves, meters, sprinkler head adjustments, turf restorations, recycled water identification tags, etc.); and
  - Typical steps required for cross connection testing.
- Prepare a figure showing preliminary onsite conversion schematics.

Consultant assumes that water use data for each customer for the last 3 – 5 years will be analyzed by City's hydraulic modeling consultant. Consultant assumes that City's hydraulic modeling consultant will provide the pipe sizes required for each of the pipes as well as the elevation required for the storage tank.

Consultant assumes that City's hydraulic modeling consultant will analyze potential non-potable water use for each of the five potential Phase 3 customers to calculate what portion of each customer's water service profile can be converted to recycled water. Consultant assumes that

City's hydraulic modeling consultant will provide a table showing average annual use, peak day use, and hours and days of operation based on metering data and customer provided usage information.

Task 6.3 Deliverables

- Existing meters and water use figure (.pdf format).
- Preliminary site conversion schematics (.pdf format).
- Average annual use, peak day use, and hours and days of operation table (.pdf format).

Task 6.4 Contingency

An Optional Services Contingency Task is included should unanticipated expenses or efforts be required for completion of the Project.

All work shall be completed by June 30, 2016.

Exhibit A- Attachment 1 Potential Customer List

Item segment #		Location	Customer Name	Street Address	Serial Number
1A		3008371	City of Milpitas	1331 E Calaveras Blvd	7216731
1B		3015912	City of Milpitas	Cardoza Park Ave	9503049
1C	1	3008530	MUSD/Burnett (1)	Kennedy Dr	4859707
1C	2	3008530	MUSD/Burnett (2)	Kennedy Dr	4859707
3D			Summitpointe Golf Course	Country Club Dr	
3E			Ed Levin Park	Old Calaveras Rd	
3F			Spring Valley Golf Course	Old Calaveras Rd	
4G		3010338	MUSD/Randall	1300 Edsel Dr	7122055
4H			Foothill Park		
4I	1	3010886	MUSD/Rose (1)	300 Roswell Dr	4213813
4I	2	3010886	MUSD/Rose (2)	300 Roswell Dr	4213813
4J		3011560	MUSD/Murphy	Murphy School Dr	5443384
4K	1	3015906	City of Milpitas (1)	511 Platt/Saratoga Ave	4209347
4K	2	3015906	City of Milpitas (2)	511 Platt/Saratoga Ave	4209347
4L	1	3015907	City of Milpitas (1)	1596 Everglades Dr	4963194
4L	2	3015907	City of Milpitas (2)	1596 Everglades Dr	4963194
4M	1	3015902	City of Milpitas (1)	Everglades #511-10 Dr	31937683
4M	2	3015902	City of Milpitas (2)	Everglades #511-10 Dr	31937683
4N		3016037	City of Milpitas	Skyline Park Way	9208565
4O		3016038	City of Milpitas	Fieldcrest Park Way	8030826
4P		3013322	MUSD/Rancho	915 Sequoia Dr	7122119
4R		Unknown	Domestic or Irrigation	Yellowstone East of SPV	
4S		3016039	City of Milpitas	Chipman/Lynwood	8030825
4T		3013622	Hillcrest Terrace HOA	2154 Calle Vista Verde Dr	9703668
4U		3013852	Hillcrest Terrace HOA	Cuesta/Ter HOA	8032030
4V		3013945	Hillcrest Terrace HOA	Ridgemont/Common Dr	7213665
4W		3014085	Hillcrest Terrace HOA	2300 Lynwood Terr	8030836
4X		3014214	Hillcrest Terrace HOA	1357 Terra Alta Dr	9509657
4Y	1	3015908	City of Milpitas	Yellowstone Ave	4363659
4Y	2	3015908	City of Milpitas	Yellowstone Ave	4363659
5Q	1	3015909	City of Milpitas (1)	Creighton Park Ave	4769498
5Q	2	3015909	City of Milpitas (2)	Creighton Park Ave	4769498
4			***Montessori School***	***1500 Yosemite***	
4			***Sinnott School***	***2025 Yellowstone***	
			City of Milpitas	***Yosemite***	

EXHIBIT B

COMPENSATION SCHEDULE

Tasks	Labor																	Outside Services			ODCs		Total
	Principal In Charge	Project Manager	Quality Control	Technical Lead	Technical Support	Technical Support	CEQA Lead	CEQA Support	CEQA Support	Funding Lead	Funding Support	Funding Support	Drafter	Graphics	Julie Yamamoto	Total Hours	Total Labor Costs (1)	Rincon Consultants Inc.	Subtotal	Sub Consultant Total Cost (2)	ODCs	Total ODCs (3)	Total Fee
	Mike Matson	Steve Bui	Marc Nakamoto	Jennifer Glynn	Madison Casserly	Shelly Masuda	Robin Cort	Crystal Benham	Simon Kobayashi	Emmalynne Roy	Courtney Rubin	Sally Johnson	Stephen Jung	Linda Woodrow-Gray	AD-5			Bio/Cultural					
	$295	$286	$244	$244	$174	$162	$259	$234	$146	$212	$190	$162	$145	$212	$130								
Task 1: Project Management																							
1.1 Project Management	8	12		8			8			8					16	60	$13,592		$0	$0	$100	$110	$13,702
Subtotal Task 1:	8	12	0	8	0	0	8	0	0	8	0	0	0	0	16	60	$13,592	$0	$0	$0	$100	$110	$13,702
Task 2: Coordination with Potential Phase 3 Customers																							
2.1 Customer Meetings		30									24					54	$13,140		$0	$0	$500	$550	$13,690
2.2 City Meetings	2	6									8					16	$3,826		$0	$0	$100	$110	$3,936
2.3 SBWR Coordination				4	8											12	$2,368		$0	$0		$0	$2,368
2.4 SWRCB Coordination				4	8											12	$2,368		$0	$0		$0	$2,368
Subtotal Task 2:	2	36	0	8	16	0	0	0	0	0	32	0	0	0	0	94	$21,702	$0	$0	$0	$600	$660	$22,362
Task 3: Alignment, Storage and Pump Station Siting Study TM																							
3.1 Alignment Study	6	16	12	60	80								60			234	$46,534		$0	$0	$300	$330	$46,864
3.2 Phase 3 Storage Recommendations	2	8	4	24	4	32										74	$15,590				$100	$100	$15,690
3.3 Phase 3 Pump Station Siting Study	2	10	12	24	16	60							24			148	$28,218		$0	$0	$100	$110	$28,328
3.4 Technical Memorandum - Alignment, Storage, & Pump Station Siting Studies	2	12	8	32	60	12							8	8		142	$29,022		$0	$0		$0	$29,022
3.5 Technical Memorandum - Cost Sharing Analysis		8	2		16										4	30	$6,080		$0	$0		$0	$6,080
Subtotal Task 3:	12	54	38	140	176	104	0	0	0	0	0	0	92	8	4	628	$125,444	$0	$0	$0	$500	$540	$125,984
Task 4: CEQA-Plus Mitigated Negative Declaration																							
4.1 Project Description and Initial Study		2					8	56	16							82	$18,084		$0	$0	$120	$132	$18,216
4.2 Environmental Investigations		2					8	20	40							70	$13,164	$23,000	$23,000	$25,300		$0	$38,464
4.3 Prepare Public Draft MND and Notices	2	8	4				30	140	84				22			290	$59,838		$0	$0		$0	$59,838
4.4 Prepare Final MND, Monitoring Plan, and Notices		2	2				20	32	28							84	$17,816	$4,000	$4,000	$4,400	$80	$88	$22,304
4.5 Communications and Presentations		6					48	16	16					16		102	$23,620		$0	$0	$360	$396	$24,016
Subtotal Task 4:	2	20	6	0	0	0	114	264	184	0	0	0	22	16	0	628	$132,522	$27,000	$27,000	$29,700	$560	$616	$162,838
Task 5: Prop 1 Water Recycling Funding Program Application																							
5.1 Kickoff and Review Existing Documents		4								16	12	12				44	$8,760		$0	$0	$120	$132	$8,892
5.2 Prepare Project Report and Technical Package	2	2	2	4						12	20	20				62	$12,210		$0	$0		$0	$12,210
5.3 Prepare Environmental Package		2	2							8	12	12				36	$6,980		$0	$0		$0	$6,980
5.4 Assist with Financial Assistance Package		2	2							16	24	20				64	$12,252		$0	$0	$250	$275	$12,527
Subtotal Task 5:	2	10	6	4	0	0	0	0	0	52	68	64	0	0	0	206	$40,202	$0	$0	$0	$370	$407	$40,609
TOTAL TASK 1- 5	**26**	**132**	**50**	**160**	**192**	**104**	**122**	**264**	**184**	**80**	**100**	**64**	**114**	**24**	**20**	**1616**	**$333,462**	**$27,000**	**$27,000**	**$29,700**	**$2,130**	**$2,333**	**$365,495**
Task 6: Optional Services																							
6.1 State Revolving Fund Packaging																0	$20,000		$0	$0	$250	$275	$20,275
6.2 Additional Meetings and Coordination	20	20		20			20			20						100	$25,920		$0	$0	$500	$550	$26,470
6.3 Customer Coordination, Service Condition Analysis and Water Quality Evaluation		18	16	66	90	32							8	16		246	$50,552		$0	$0		$0	$50,552
6.4 Contingency																0	$20,000		$0	$0		$0	$20,000
Subtotal Task 6:	20	38	16	86	90	32	20	0	0	20	0	0	8	16	0	346	$116,472	$0	$0	$0	$750	$825	$117,297
TOTAL	**46**	**170**	**66**	**246**	**282**	**136**	**142**	**264**	**184**	**80**	**100**	**64**	**122**	**40**	**20**	**1962**	**$449,934**	**$27,000**	**$27,000**	**$29,700**	**$2,880**	**$3,158**	**$482,792**

1. The individual hourly rates include salary, overhead and profit.
2. Subconsultants will be billed at actual cost plus 10%.
3. Other direct costs (ODCs) such as reproduction, delivery, mileage (rates will be those allowed by current IRS guidelines), and travel expenses, will be billed at actual cost plus 10%.
4. RMC reserves the right to adjust its hourly rate structure and ODC markup at the beginning of the calendar year for all ongoing contracts.

EXHIBIT C

INSURANCE DOCUMENTS

Project Name: Augustine Park and Community Garden Recycled Water Conversion
Date: 6-16-2015

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
RMC WATER & ENVIRONMENT, INC.

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a Municipal Corporation of the State of California (hereafter referred to as "CITY") and RMC Water & Environment, Inc., a California Corporation (referred to herein as the "Consultant") as of June 16, 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 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 a guaranteed maximum price not to exceed Twenty Six Thousand Five Hundred Fifty Nine Dollars ($26,559) 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 **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 Eighty Seven dollars ($87.00). 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 ONE MILLION DOLLARS ($1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured

retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 **Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778

of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other

materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 **No Implied Waiver of Breach**. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by City Engineer who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Steve Bui
RMC Water and Environment
100 West San Fernando Street, Suite 320
San Jose, CA 95113

Any written notice to City shall be sent to:
Steven Machida, Director of Engineering
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

_____

Thomas C Williams, City Manager

APPROVED AS TO FORM:

_____

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

_____

Steven J. Machida, Director of Engineering8

APPROVED:

_____

Emma Karlen, Finance Director/Risk Manager

CONSULTANT

_____

Taxpayer Identification Number

_____

EXHIBIT A

SCOPE OF SERVICES FOR AUGUSTINE PARK AND COMMUNITY GARDEN CONVERSION TO RECYCLED WATER

Consultant shall provide design services for the Augustine Park Recycled Water Retrofit project (Project). The Project involves the retrofit conversion of an existing irrigation system at Augustine Park and an existing adjacent community garden each to be served with recycled water. The Project also includes design of a new potable water service line to serve a drinking fountain, sink and hose bib in the community garden per State Water Board – Division of Drinking Water (DDW) requirements and the design of a new sanitary sewer lateral to take the waste water from the new community garden sink to the City's sewer system. The Project is a part of the City of Milpitas' efforts to respond to the ongoing drought by offsetting potable water used for irrigation.

Scope of Work

Task 1 – Concept Design

- Project Management: Consultant shall provide coordination and management of the Project, including coordinating with the City's designated Project Manager. Consultant shall provide monthly invoices detailing dollar amount budgeted for each task and dollar amount spent.
- Data Review: Following the Notice to Proceed, Consultant will review irrigation plans for the park and community garden, which will be provided by the City.
- Field Visit: Within one (1) week of issuance of the Notice to Proceed, Consultant will coordinate with the City, prepare for, and attend a field visit to Augustine Park and the community garden. The purpose of this field visit will be to test meters, verify the presence of existing fixtures served with potable water, and to confirm the location of the community gardens sink(s), drinking fountain(s) and hose bib(s) that will remain on potable water service after the recycled water conversion.
- Concept Design: Using retrofit plans for Augustine Park (prepared in 2003 by others) as a starting point, Consultant will prepare concept design plans for the recycled water conversion of Augustine Park. Consultant will prepare new concept retrofit plans for the community garden conversion and for the proposed potable water lateral. Consultant will obtain and review available onsite plans (domestic water and irrigation) from City staff. The concept plans will include:
    - Proposed location of the new potable water service line;
    - Proposed location of the new sanitary sewer lateral;
    - Proposed location of the community garden fixtures to remain on potable water service after the recycled water conversion;
    - Direction on the how to connect the recycled water service to the irrigation system and how to maintain potable service to the potable system. Identify connections to the existing potable water meter(s) or the new recycled water meter;

Assumptions

- Consultant assumes that the City will complete all work associated with DDW permitting and coordination with South Bay Water Recycling.
- Consultant is not responsible for any retrofit of the existing irrigation system for recycled water. Any irrigation system improvements to adjust for overspray will be completed by City Parks Staff as part of ongoing maintenance.
- Consultant assumes that utility research and coordination will be completed by the City or deferred to the contractor. Consultant also assumes that the City will provide mapping for street right of way at services and laterals.

Task 2 – Final Design

If the City determines that the Concept Design prepared in Task 1 is sufficient for permitting and for City crews to complete the retrofit, the City may choose to not to complete final design. However, if the City determines that more information is needed to obtain necessary permits and/or if the Project will go out to bid, Consultant will undertake the following work:

- Project Management: Consultant shall provide coordination and management of the Project, including coordinating with the City's designated Project Manager. Consultant shall provide monthly invoices detailing dollar amount budgeted for each task and dollar amount spent.
- Consultant will prepare and submit final stamped design plans for bidding. Final design plans will include:
    - Utility research for up to six (6) utility agencies. The schedule assumes that utility agencies will be responsive within two weeks of requests for information.
    - Final design and location of the proposed 1" – 2" potable water pipeline to be installed via impact mole to serve the community garden;
    - Final design and location of the proposed new fixtures to be served from the potable water service after the recycled water conversion;
    - Proposed signage locations to meet Title 22, Article 4 Use Area Requirements.
- Consultant will prepare and submit City boilerplate specifications, modified specifically for the Project.

All work shall be completed by June 30, 2016.

EXHIBIT B

COMPENSATION SCHEDULE

Tasks	Labor								ODCs		Total
	Steve Bui	Marc Nakamoto	Courtney Rubin	Madison Casserly	Stephen Jung	Julie Yamamoto	Total Hours	Total Labor Costs (1)	ODCs	Total ODCs (3)	Total Fee
	PIC EPS-12	QC EPS-9	PE EPS-4	PE EPS-3	CAD TECH-4						
	$286	$244	$190	$174	$145	$130					
Task 1: Preliminary Design											
1.1 Project Management	2			4		2	8	$1,528	$40	$44	$1,572
1.2 Field Visit			8	10			18	$3,260	$40	$44	$3,304
1.3 Preliminary Design Plans - Augustine Park, Community Gardens, Potable Water Pipeline and Sanitary Sewer		4		24	20		48	$8,052		$0	$8,052
Subtotal Task 1:	2	4	8	38	20	2	74	$12,840	$79	$87	$12,927
Task 2: Bid Package											
2.1 Project Management	4			4		2	10	$2,100	$0	$0	$2,100
2.2 Final Design Plans - Augustine Park, Community Gardens, Potable Water Pipeline and Sanitary Sewer		2		16	20		38	$6,172		$0	$6,172
2.3 Final Design Specifications		2		16			18	$3,272	$0	$0	$3,272
2.4 Utility Research and Coordination				12			12	$2,088			$2,088
Subtotal Task 2:	4	4	0	48	20	2	78	$13,632	$0	$0	$13,632
TOTAL	6	8	8	86	40	4	152	$26,472	$79	$87	$26,599

EXHIBIT C

INSURANCE DOCUMENTS

PROJECT NAME RMC

PROJECT NO.: Utility Engineering Support

*24C

SECOND AMENDMENT TO THE AGREEMENT FOR CONSULTATION AND OTHER SERVICES

This Amendment is entered into this 16th 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 RMC Water & Environment, Inc., a California corporation (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an Agreement on October 7, 2014 entitled "Consultant Services Agreement between the City of Milpitas and RMC Water Environment, Inc." ("Agreement") for engineering services in the amount of $27,734 with an expiration date of June 30, 2015; and

WHEREAS, on April 7, 2015, the parties entered into Amendment No. 1 to the Agreement to increase the scope of work and compensation by $58,000, for a total not to exceed amount of $85,734, and extended the term to December 31, 2015; and

WHEREAS, the parties desire to further increase the scope and compensation by $42,000.

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

1. Section 2, entitled "Compensation" of the Agreement is amended in its entirety to read as follows:

   Section 2. Compensation. City hereby agrees to pay Consultant an amount not to exceed One Hundred Twenty Seven Thousand Seven Hundred Thirty Four Dollars ($127,734) 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. The CONSULTANT agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated October 7, 2014,

between CONSULTANT and CITY. The CONSULTANT shall provide CITY with renewal certificates of the current policies upon the expiration of the current policy.

3. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date on the first page.

CITY OF MILPITAS	CONSULTANT
_____	_____
Thomas C. Williams, City Manager	Steve Bui, Principal

APPROVE AS TO FORM:

_____

Steven J. Machida, Director of Engineering

APPROVED

_____

Michael J. Ogaz, City Attorney

*24D

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
☒ **Budget Appropriation**	400-2940 401-951-7118-15-3899	$482,792 $482,792	400-3999 401-951-7118-1-4800	$482,792 $482,792
☐ **Budget Transfer**				

Explain the reason for the budget change:

: Staff recommends Council to approve four actions to continue the work described in this staff report:

1. Approve a Consultant Agreement with RMC Water and Environment (RMC) to prepare preliminary engineering design documents for planned recycled water pipeline extensions easterly across I-680 and into the Milpitas hillsides. These documents will also serve as the basis for external grant and loan funding applications.
2. Approve a Consultant Agreement with RMC to prepare plans to convert Augustine Park and the Community Garden to recycled water. This effort is included in the proposed Water Conservation Program discussed elsewhere on this agenda.
3. Approve Amendment No. 2 to the Consultant agreement to provide part-time staff assistance.
4. Approve a budget appropriation of $482,792.

The proposed work is described in more detail below.

1. **Background of the first action CIP No. 7118:** On May 5, 2015, the City Council received a staff report on Water Supply Augmentation, and directed staff to continue with the work plan tasks for conservation, recycled water, and ground water wells. The City planned recycled water pipeline extensions east of I-680 to serve schools, parks, hillside golf courses and general landscaping for an estimated cost of $37 million. The State is currently developing several funding programs for recycled water projects, and anticipates receiving applications this summer for Proposition 1 and State Revolving Loan funds. Staff reviewed preliminary guidance information and determined that several documents are required to be prepared and submitted with the applications. RMC was selected from the City's list of consultant engineers to prepare these documents for the following reasons: RMC's past experience in preparing these documents for other agencies, RMC is designing the first phase of the recycled water pipeline extension, and RMC recently prepared the Recycled Water Master Plan Update for South Bay Water Recycling and the Santa Clara Valley Water District.

   The work consists of reviewing proposed pipeline alignments and hydraulic modeling results, pump station and tank siting, customer coordination and documentation, environmental documents, mapping, preliminary design, construction cost estimates, and preparation of Proposition 1 funding application. Most of these documents are necessary for preliminary engineering design, even if the City were not pursuing outside funding. The work is estimated to cost $482,792.

   California Environmental Quality Act (CEQA): The project is exempt under CEQA Guidelines Section 15262 (Feasibility and Planning Studies).

   Alternative: The consultant agreement and budget appropriation are needed in preparation for the City's application for outside funding for planned recycled water pipeline extensions. If the agreement and appropriation are not approved the project would not proceed.

Fiscal Impact: A budget appropriation from the Water Fund is necessary to begin the work. There are sufficient reserves in the Water Fund; however the balance may temporarily drop below the level established by Council policy (30% of operating costs). The proposed water rates include costs for a possible $15 million bond program. The Water Fund Fund may reimbursed from the water revenue bond proceeds when issued. Staff is also pursuing grants and loans.

2. **Background of the second action CIP No. 7126**: As noted elsewhere on this agenda, the water supply shortage is serious. One aspect of the proposed Water Conservation Program is to convert irrigation sites from potable water to recycled water use. Staff has identified a priority list of City-maintained irrigated sites, such as parks and street medians, currently served by potable water that could be converted to recycled water use. Plans, showing conversion details, must be submitted to South Bay Water Recycling (SBWR) and the State Water Resources Control Board (SWRCB) for approval. Two of the priority sites are Augustine Park and the Community Garden, which are served by a common irrigation meter. Recycled water use for vegetable gardens is allowed by both SBWR and the SWRCB but the SWRCB also requires a potable water sink for vegetable rinsing. The Guadalupe Community Garden located in San Jose has been using recycled water since 2008.

   In order to expedite the conversion process, staff has selected two consultants from the Engineering Division's consultant list and recommends dividing preparation of conversion plans between the two consulting firms. RMC Water & Environment was selected for conversion of Augustine Park and the Community Garden. The proposed agreement is in the amount of $26,559 for a term from June 16, 2015 to June 30, 2016.

   California Environmental Quality Act (CEQA): The project is exempt under the following Sections of the CEQA Guidelines:
   - Section 15302(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity
   - 15303(d) Water main and other utility extensions of reasonable length to serve new construction or conversion of small structures
   - 15304(b) Minor alterations to land including new gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping
   - 15307 Actions By Regulatory Agencies for Protection of Natural Resources

   Fiscal Impact: None. The funding for this work is included in the Water Conservation Program discussed elsewhere on this agenda.

3. **Background of the third action:** On October 7, 2014, the City entered into an Agreement with RMC Water and Environment, Inc for support to backfill City staff vacancy in the Utility Engineering Section for water/recycled water distribution and wastewater collection systems through June 30, 2015. The City Council approved Amendment No. 1 for $58,000 for additional services on April 7, 2015. Staff recommends increasing the agreement in the amount of $42,000 for continued support anticipated to be needed through December, 2015. This will bring the total value of the agreement to $127,734. The proposed Amendment No. 2 is included in the Council packet.

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

programs.

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

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

4. **Background of the fourth item:** A budget appropriation of $482,792 from the Water Fund to CIP No. 7118 is necessary to perform preliminary engineering and external funding applications for the recycled water line extensions. Approval of the Water Conservation Program and its budget appropriation discussed elsewhere on this agenda will provide sufficient funding to prepare retrofit plans for Augustine Park and the Community Garden. There are sufficient funds in the Utility Engineering operating budget to cover staff backfill support.

Recommendations:

1. Approve the consultant agreement with RMC Water & Environment for engineering services in the amount of $482,792, CIP No. 7118.
2. Approve consultant agreement with RMC for engineering services in the amount of $26,559, CIP No. 7126.
3. Approve Amendment No.2 to the Consultant Services Agreement with RMC Water and Environment, Inc for Utility Engineering support in the amount of $42,000.
4. Approve a budget appropriation of $482,792 from the Water Fund to CIP No. 7118.

☒ **Check if City Council Approval required.** **Meeting Date**: June 16, 2015

Requested by:	Marilyn Nickel, Associate Civil Engineer	**Date:** June 6, 2015
Reviewed by:	**Finance Director:** Emma Karlen	**Date:** 6/8/15
Approved by:	**City Manager:**	**Date:**
Date approved by City Council, if required:		**Confirmed by:**

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

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
WATER SOLUTIONS INCORPORATED

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 Water Solutions, Incorporated, a Delaware Corporation ("Consultant") as of June 16, 2015.

AGREEMENT

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

1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 31, 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 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 Four Hundred Twenty Seven Thousand dollars ($427,000.00) 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.** 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 for each task set forth in Exhibit A and Exhibit B, and for each optional task set forth in Exhibit A and Exhibit B.

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. The insurance documents shall be included as Exhibit C.

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 shall not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant shall 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 Michael Boitnott 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:

Water Solutions
Glenn Reynolds, Principal-in-Charge
179 West Point Avenue
Half Moon Bay, California 94019

Any written notice to City shall be sent to:
Steven Machida, Director of Engineering
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits and attachments to exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Thomas C Williams, City Manager

CONSULTANT
Water Solutions, Inc.

Glenn Reynolds, Principal

Taxpayer Identification Number

94-3232995

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

Corporate Entity Number

C2062749

APPROVED AS TO CONTENT:

Steven Machida, Director of Engineering

EXHIBIT A

SCOPE OF SERVICES FOR FUNDING PACKAGING OF GROUNDWATER WELL SYSTEM AND CONSERVATION SYSTEM

General Descriptions of Project:

This Project is a part of the City's efforts to respond to the ongoing drought by expanding the groundwater system and conservation system (smart meter and supervisory control and data acquisition (SCADA), leak detection system). The work includes conceptual design-preliminary engineering, environmental compliance documentation, and funding application services (Proposition 1, state loan or other) for the Potable Water Evaluation Project (Project). The Project involves the evaluation of groundwater well expansion, smart meter installation, SCADA, leak detection system and other conservation measure. The Project also includes coordination with City staff, manufacturer's representatives, and the State Water Resources Control Board Division of Drinking Water (DDW). Finally, the Project's necessary environmental approval, would include preparation of a CEQA-Plus or NOE document as describe below.

Task 1: Project Management

Consultant shall prepare monthly invoices, manage any subconsultants, and coordinate with the City's Project manager. Consultant shall monitor its activities against the Project schedule and track expenditures and progress against the scope of work.

Task 1 Deliverables:

Monthly invoice, progress report, and budget table.

Task 2: Groundwater Well Evaluation Technical Memorandum

Consultant shall prepare a Technical Memorandum (TM) evaluating:

a. Next steps to be implemented for operation of Pinewood Well, including general house keeping, hardness reduction, disinfection, monitoring, etc.
b. Next steps to be implemented for Curtis Well construction: pump, disinfection, hardness treatment and/or blending (on-site vs Gibraltar site) .
c. Next steps for siting another well, including drilling of monitoring wells, pump testing, etc.
d. It includes site visit evaluations for these items:
    - Planning-level construction cost estimate
    - Preliminary implementation schedule
    - Operations & Maintenance considerations
    - Constructability (risk)
    - Impacts to the local environment: noise, traffic, construction traffic, etc
    - Hydraulic capacity, including pump station hydraulics such as suction pressure, discharge head and flow
    - Schedule for sequencing of system operations of well(s).
    - Permitting support
    - Anticipated space requirements and identification of sites with adequate space

- Identification of sites with appropriate access

Task 2 Deliverables:

- Preliminary site plan (autocad and .pdf format).
- Preliminary plans and technical specifications (.docx and .pdf format).
- Draft Technical Memorandum (.docx format).
- Final Technical Memorandum (.docx and .pdf format).

Task 3: Conservation System

Consultant shall prepare a Technical Memorandum (TM) evaluating:

a. Smart meter installation on call technical advice
b. Water system SCADA options
c. Leak detection system options
d. It includes site visit evaluations for these items:
    - Planning-level construction cost estimate
    - Preliminary implementation schedule
    - Operations & Maintenance considerations
    - Constructability (risk)
    - Impacts to the local environment: noise, traffic, construction traffic, etc
    - Schedule for sequencing of system operations for water supply system.
    - Permitting support
    - Anticipated space requirements and identification of sites with adequate space
    - Identification of sites with appropriate access

Task 3 Deliverables:

- Preliminary site plan (autocad and .pdf format).
- Preliminary plans and technical specifications (.docx and .pdf format).
- Draft Technical Memorandum (.docx format).
- Final Technical Memorandum (.docx and .pdf format).

Task 4: CEQA-Plus

Consultant shall prepare a Mitigated Negative Declaration (MND) or Notice of exemption (NOE) as necessary for the Project in compliance with the California Environmental Quality Act (CEQA). Consultant recommends including federal cross-cutting analysis in the MND, often referred to as "CEQA-Plus" documentation, which provides the City with streamlined CEQA clearance should federal or State Revolving Fund (SRF) financing be sought for construction. The work shall be completed under the following subtasks.

4.1 Project Description and Initial Study

CONSULTANT shall prepare a Project description suitable for CEQA compliance based on the technical memorandum completed in the above tasks. An electronic copy of the Project description shall be provided to the City for review. Once the City has approved the Project description,

CONSULTANT's team shall conduct a site reconnaissance visit to identify existing land uses and environmental conditions within the Project area.

CONSULTANT shall prepare an Initial Study in compliance with Appendix G of the CEQA Guidelines that identifies the potential environmental impacts of the Project, including brief supplemental comments which concisely describe those impacts and identify where mitigation is necessary. The Initial Study shall be organized by CEQA resource category and impacts shall be identified for each Project component. This scope of work assumes that completion of an Initial Study shall result in the conclusion that an MND is the appropriate CEQA compliance document for the proposed Project. In the event the Initial Study demonstrates additional environmental review or an Environmental Impact Report is required (which is not contemplated under this Agreement), the parties will meet and discuss the best approach to move the Project forward.

Due of the location of the Project being within existing disturbed areas primarily within existing streets or City parks, detailed analysis is not expected to be necessary to support the conclusion that the Project would not have significant impacts on aesthetics (i.e., Project-specific renderings of groundwater well station(s) are not included in the scope), recreation, utilities and service systems, public services, energy, geology and soils, hydrology and water quality, mineral and energy resources, or agricultural resources. Issues of concern shall be evaluated in greater detail. Impacts associated with air quality and traffic are expected to be largely confined to the construction period, and short-term traffic impacts would be treated as less than significant with incorporation of standard mitigation such as a traffic control plan. It is assumed that pump stations can be sited and designed so as to avoid issues with land use compatibility and operational noise impacts on any nearby sensitive receptors.

4.2 Environmental assessments or Investigations as necessary

CONSULTANT shall prepare any necessary stand-alone Assessment(s) that identifies and assesses potential impacts of the appropriate resources from the Project. Preparation of the Assessment shall include general site surveys to characterize the concerns that may occur adjacent to Project facilities. The Assessment shall evaluate the Project's compliance with federal resource regulations.

The MND shall also identify necessary permits with other State and local public agencies that might be affected by the Project.

Findings from the Assessment(s) shall be incorporated into the MND. An electronic copy of the Administrative Draft MND shall be provided to the City for review.

4.3 Prepare Public Draft MND and Notices

CONSULTANT shall respond to comments received from City staff and revise the Administrative Draft MND accordingly for review as the Screencheck Draft MND. An electronic copy of the Screencheck Draft MND shall be provided to the City for review. CONSULTANT shall respond to final comments received from City staff and finalize the Screencheck Draft MND accordingly for release as the Public Draft MND. This scope of work assumes that CITY comments received on the Screencheck Draft MND shall be limited to editorial and formatting changes, not new

substantive analysis. An electronic copy and up to 10 hard copies of the Public Draft MND shall be provided to the City.

CONSULTANT shall prepare a draft Notice of Intent (NOI) to adopt an MND in accordance with CEQA Guidelines §15072. CONSULTANT shall work with the City to identify the list of interested parties and responsible agencies who shall receive the NOI. CONSULTANT shall finalize and publish the NOI in the newspaper and shall be responsible for reproduction and distribution of the NOI to interested parties, responsible agencies, the County Clerk, and the State Clearinghouse.

If appropriate, a draft notice of exemption shall be prepared in lieu of draft MND for review by City.

4.4 Prepare Final MND, Mitigation Plan or Final NOE and Notices
Following receipt of public comments, CONSULTANT shall develop a matrix of comments received and recommended responses. As necessary and directed by the City, CONSULTANT shall revise the Public Draft MND based on comments received during the public review period. An electronic copy of the Public Draft MND shall be provided to the City. This scope of work assumes that the Final MND revisions shall not result in identification of significant environmental effects and thus shall not require recirculation of the document. If level of effort for responses to comments exceed that estimated in the budget CONSULTANT shall submit a request for amendment of scope and budget.

CONSULTANT shall prepare a Mitigation Monitoring and Reporting Program (Monitoring Plan) that contains the measures that are required as conditions of Project approval to avoid or reduce potential environmental impacts to less-than-significant levels. For any significant impact identified in the MND, the Monitoring Plan shall describe the required mitigation, the tasks and schedule necessary for monitoring compliance, and the entity responsible for each monitoring and reporting task. An electronic copy of the Draft Monitoring Plan shall be provided to the City for review. CONSULTANT shall respond to comments received from the City and revise the Monitoring Plan accordingly. An electronic copy of the Final Monitoring Plan shall be provided to the City.

CONSULTANT shall prepare a draft Notice of Determination (NOD) following approval of the Project, in accordance with CEQA Guidelines §15075. Following City review, CONSULTANT shall finalize and transmit the NOD to the County Clerk and State Clearinghouse.

CONSULTANT shall prepare a final Notice of Exemption (NOE) following approval of the Project, in accordance with CEQA Guidelines in lieu of NOD if appropriate. Following City review, CONSULTANT shall finalize and transmit the NOE to the County Clerk.

4.5 Communications and Presentations
CONSULTANT shall prepare for and attend up to four (4) Project meetings with the City at key points throughout the Project. The meetings are anticipated to include the following:

- To receive City comments on the Administrative Draft MND (staff meeting).
- To discuss public comments received on the Public Draft MND (staff meeting).
- To present the Final MND and Monitoring Plan to the Planning Commission and City Council.

CONSULTANT shall prepare an agenda and meeting notes for each staff meeting and a presentation for the Board hearing. At a minimum, CONSULTANT's CEQA task lead shall attend each meeting. It is assumed that other Project coordination can occur via email and conference calls, which may also include webbased presentations.

Task 4 Deliverables

- Draft and final Project Description and initial study (.pdf files).
- Draft and final Assessment(s) as appropriate (.pdf files; Hard copies as appendix to Public Draft MND).
- Administrative Draft MND for City review as appropriate (.pdf files).
- Screencheck Draft MND for City review as appropriate (.pdf files).
- Draft and final Notice of Intent (.pdf files; Hard copies mailed to interested parties, responsible agencies, County Clerk, and State Clearinghouse) as appropriate.
- Public Draft MND and cover letter to the State Clearinghouse for City reproduction and distribution (Microsoft Work and/or .pdf files and up to 10 hard copies) as appropriate.
- Final MND for City approval and certification (.pdf files and up to 10 hard copies).
- Draft and final Monitoring Plan (.pdf files) as appropriate.
- Draft and final Notice of Determination or Notice of Exemption (.pdf files; Hard copies mailed to County Clerk and State Clearinghouse)

<u>Task 5: Funding Application and Coordination</u>

CONSULTANT shall prepare an application for funding/financing under the Proposition 1 Drinking Water Funding Program, administered by the State Water Resources Control Board's Division of Financial Assistance. This scope of work assumes that the application shall be generally similar to the existing State Revolving Fund applications as suggested by the draft Guidelines that are currently available.

5.1 Kickoff and Review Existing Documents

One (1) two-hour kick-off meeting with City staff shall be conducted to collect information necessary for the application. CONSULTANT shall prepare an agenda and meeting notes for the staff meeting. It is anticipated that phone calls with City staff shall be adequate during preparation of the draft application and when responding to comments. This task involves a review of existing documents and available background information provided by the City on the Project. CONSULTANT shall also perform general Project management activities, including budget and schedule tracking, and preparation of monthly invoices and progress reports.

5.2 Prepare Project Report and Technical Package

The information in the technical memorandum being prepared under Tasks 2 and 3 may feed into the fund application packaging. CONSULTANT shall compile the following information in the Project Report format:

- Study area characteristics.
- Water supply characteristics and facilities.
- A cost-effectiveness evaluation of alternative Project concepts.
- An estimate of the total capital costs and annual operation and maintenance costs.
- A map of the service area.

- A written record of the required public meeting. A noticed public meeting is required to obtain public comment on the proposed Project and to discuss financial and environmental factors related to the Project.
- Documentation showing that the applicant has the legal, institutional, managerial, and financial capability to construct the proposed Project and to operate and maintain the Project facilities throughout their service life.
- A discussion of the selected alternative that includes the following:
    - A detailed description of the selected alternative.
    - A statement of the relevant design criteria.
    - The estimated construction cost and annual operation and maintenance cost, and a description of how the local costs shall be financed.
    - Dedication of an identified source of revenue to repay the loan (Required for loans only).
    - A discussion of the water quality and other non-monetary benefits of the Project.
    - A discussion of any interagency service agreements necessary to construct, operate, and maintain the system.
- An implementation schedule for completion of the Project.

An electronic copy of a draft Project Report shall be provided to the City for review and comment. CONSULTANT shall complete the necessary forms, compile it with the Project Report, and provide a review copy for the City. Following incorporation of comments received, an electronic copy of the final Technical Package shall be submitted via FAAST (their online submittal website) to SWRCB. CONSULTANT shall also help the City in responding to any comments and questions received from the SWRCB staff on the Technical Package. CONSULTANT shall assist with the capacity assessment of the technical, managerial and financial capacity of the City's PROJECT and provide recommendations.

5.3 Prepare Environmental Package

The majority of the information required for the Environmental Package is contained in the MND being prepared under Task 4. CONSULTANT shall complete the necessary forms, compile it with the MND, and provide a review copy for the City. Following incorporation of comments received, an electronic copy of the final Environmental Package shall be submitted via FAAST (their online submittal website) to SWRCB. CONSULTANT shall also help the City in responding to any comments and questions received from the SWRCB staff on the Environmental Package.

5.4 Assist with Financial Assistance Package

CONSULTANT shall assist the City with preparing the Financial Assistance Package, using financing information and required certificates provided by the City. The information in the technical memorandum being prepared under Tasks 2 and 3 may feed into the financial assistance packaging. CONSULTANT shall provide up-to-date planning-level cost estimates for planning, construction, design, right-of-way acquisition, utility relocation, engineering services during construction, contingencies, and any additional cash flow needs. CONSULTANT shall compile all of the provided materials into a complete Financial Assistance Package.

CONSULTANT shall complete the necessary forms, compile it with the materials provided by the City, and provide a review copy for the City. Following incorporation of comments received, an

electronic copy of the final Financial Assistance Package shall be submitted via FAAST (their online submittal website) to SWRCB. CONSULTANT shall also help the City in responding to any comments and questions received from the SWRCB staff on the Financial Assistance Package.

Task 5 Deliverables

- Agenda and notes for kickoff meeting.
- Draft and final Project Report, general Package (.docx format and .pdf files).
- Draft and final Technical Package (.docx format and .pdf files).
- Draft and final Environmental Package (.docx format and .pdf files).
- Draft and final Financial Assistance Package (.docx format and .pdf files).

Task 6: Optional Services **(at City Sole discretion):**

As applicable, CITY will provide written direction and confirm budget for any additional or optional service to be performed. Written authorization must be obtained from the CITY prior to the CONSULTANT beginning additional services/optional work. The CITY will not be responsible for additional work that the CONSULTANT performs prior to receiving written authorization.

6.1 Additional Meetings and Coordination
This Optional Services Task provides additional meeting and coordination budget for unanticipated meetings based on time and material basis.

6.2 Contingency
An Optional Services Contingency Task is included should unanticipated expenses or efforts be required for completion of the Project.

All work shall be completed by June 30, 2016.

General requirements

1. CONSULTANT shall coordinate and manage sub-consultants throughout the term of the Agreement.

2. Where applicable: plan sheet size shall be 24x36, plans shall be at reasonable scales, but not smaller than 1”=40’ for site, and Civil. Details shall be of a minimum size to easily read and understand the information that is being conveyed.

3. Where applicable: Technical memorandum shall be 81/2” by 11”. Two final hard signed copies with pdf and MS Office versions (word, excel etc) compatible with CITY personnel’s computer are required (email or on diskette as necessary) Draft copies shall be emailed in compatible version to CITY personnel.

4. Where applicable: CONSULTANT shall be responsible for meeting the requirements of the CITY Standards, Outside Agencies, Local, State, and Federal codes and regulations, and CEQA submittal and approval requirements.

5. Where applicable, the CONSULTANT shall design the Project in compliance with latest CITY, State, and Federal Storm Water Pollution Prevention, Stormwater Treatment Requirements "C3" and Erosion Control guidelines. CONSULTANT shall provide Erosion Control Plan details, guidelines and technical specification section for the Contractor to use in preparing the project Storm Water Pollution Prevention Plan "SWPPP" and compliance with the State Notice of Intent "NOI" requirements if the threshold of disturbed area is exceeded.

6. Where applicable, CONSULTANT shall prepare the Project Plans using the CITY's Standard Title Block to be located at the bottom right of each Plan sheet (CITY to provide title block in AutoCAD).

7. Where applicable, Project Specifications shall be prepared using the CITY's standard front end template (CITY to provide in MS Word). CITY also has several Technical Specification Sections, which are also standard that may be used on the project. If CONSULTANT uses CITY provided technical sections the CONSULTANT shall be solely responsible and accountable for all design of the project. All other technical specification sections shall be prepared by the CONSULTANT. The specifications shall be created in conformance with the current industry standard, Construction Specification Institute "CSI" 50 Division format. The technical specifications shall be coordinated with the plans, CITY Standard front end template, and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines. The construction documents shall conform to the applicable: Current California Codes as adopted by the City of Milpitas, and all other applicable local, State and Federal codes, regulations, permit requirements, and conditions necessary for issuance of the necessary permits for construction. The specifications shall include measurement and payment wording. CONSULTANT shall coordinate the inclusion of the technical specifications into the front-end specifications as one packet. CONSULTANT shall provide estimated construction costs in the form of the contractor bid proposal format. Unit cost items shall be used whenever possible. The construction schedule shall be specified in working days or calendar days as approved by CITY.

8. Where applicable, CONSULTANT shall assist the CITY in coordination with utility companies including submittal of all necessary service applications. CONSULTANT shall provide all necessary information requested by utility companies. CONSULTANT shall incorporate utility company comments into the design. CONSULTANT shall incorporate utility company review and approval times into the overall project schedule.

9. Where applicable, CONSULTANT shall obtain all necessary outside agency permits/approvals/clearances on behalf of the CITY in order to construct the improvements, CITY will pay all applicable permit/approval/clearances fees. CONSULTANT shall provide all necessary information requested by outside permitting

agencies and generate the necessary documents to obtain the required project permits. CONSULTANT shall incorporate outside permitting agencies comments into the design. CONSULTANT shall incorporate outside agency review and approval times into the overall project schedule.

10. Where applicable, CONSULTANT shall perform all necessary environmental documentation and surveys required to comply with the California Environmental Quality Act (CEQA) on behalf of the CITY in order to construct the improvements, with all additional expenses to be incurred by the CITY.. CONSULTANT shall provide necessary information requested by outside parties and the CITY. CONSULTANT shall incorporate CITY and relevant parties' comments into the design. CONSULTANT shall incorporate time to obtain environmental permits, clearance review and approvals into the overall project schedule.

11. Where applicable, CONSULTANT shall assist the CITY in obtaining all necessary easements and right-of-way in order to construct the improvements. CONSULTANT shall provide all necessary documentation and plans to obtain the respective easement or right-of-way. CONSULTANT shall incorporate time to obtain easements or right-of-way into the overall project schedule. CITY shall be responsible for all easement and right-of-way negotiations and acquisitions.

12. Where applicable, CONSULTANT shall install Temporary Bench Mark(s) (TBM) that can be used for both the design and construction portions of the project. The TBM shall be referenced on the design plans and tied to the location(s) of the new improvements.

13. Where applicable, Final plans ready for bidding shall be submitted wet signed/stamped hard copy on bond paper and on compact disk (CD) in AutoCAD 2013 or later version and PDF formats.

Quality Control/Quality Assurance (QC/QA):

CONSULTANT shall prepare plans, specifications, estimates, calculations, and other documents (such as technical memorandum) with the highest level of quality, free of technical errors and any reasonable 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 relating to this project:

- Design 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 between the plans, specifications and estimated quantities;
- 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.

Packages submitted for review by the CITY shall be accompanied by a QA/QC statement signed by a principal within the firm that they have reviewed the package and find that is in compliance with the scope of work.

DELIVERABLE:

- Signed QA/QC statement with each technical memorandum.

Milpitas available data to be provided to Consultant:

1. Cayenta water billing information (customer type and location, consumption, meter usage type (domestic, irrigation)
2. GIS/CAD of street map showing location of existing recycled water pipe, facilities (parks, pump station, etc.)
3. SCVWD conservation participation data
4. Current Milpitas water contracts
5. Master plans & FUMP are on Milpitas website
6. Available record drawings of facilities

EXHIBIT B

COMPENSATION AND HOURLY RATE SCHEDULE FOR WATER SUPPLY FEASIBLITY STUDY

Compensation & Schedule

Task	Description as stated in EXHIBIT A	Base budget *, $	Optional budget *, $	Schedule for completion
1	Project Management of Consultant Agreement	15,000		On going
2	Groundwater Well TM Pinewood at $55K, Curtis at $65K, New well at $105K	225,000		20 weeks from Notice to Proceed, NTP
3	Conservation TM	30,000		12 weeks from NTP
4	Environmental	45,000		8 weeks from NTP
5	Funding application	82,000		8 weeks from NTP
6	Optional		30,000	N/a
	Base work subtotal	397,000		N/A
	Optional subtotal		30,000	N/A
	Total	427,000		N/A

* budget, not to exceed amount is based on time and material

Reimbursables include workshop material and sub-consultant fee

N/A Not applicable

N/a Not available

Hourly Rate ($)

Principal	200
Engineer	162
Graphics	85
Hydrogeologist**	176
Attorney**	313.50

**Rates include 10% mark up for subconsultants

EXHIBIT C

INSURANCE CERTIFICATES PLACEHOLDER FOR WATER SUPPLY FEASIBLITY STUDY

*25B

City of Milpitas

2014-19 CAPITAL IMPROVEMENT PROGRAM

Category	Project		Estimate Level
Water	7127	Supervisory Control and Data Acquisition (SCADA)	1

CONTACT: Steven Machida [3355]

PRIORITY: Rehabilitation of Existing Capital Assets or Systems

$50,000

DESCRIPTION

A Supervisory Control and Data Acquisition System (SCADA) provides real-time data, such as water tank level, pump operational status, system pressure, and flow rates to water system operators. Operators can use this data to identify operational problems, such as high velocities and low pressures, pressure spikes, both indicators of pipe breaks. SCADA also allows for remote monitoring and operation of pumps and valves to implement corrective actions and maintain water supply.

COMMENTS:

Currently operators rely on unsophisticated alarms at limited locations and customer complaints to become aware of water system problems. Operators must drive to sites to evaluate the problem and implement corrective action, such as starting a back-up pump, when the main pumps fail.

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	0	0	0	300,000	0	300,000
Administration	0	0	0	0	50,000	25,000	75,000
Surveying	0	0	0	0	0	0	0
Inspection	0	0	0	0	0	75,000	75,000
Land	0	0	0	0	0	0	0
Improvements	0	50,000	0	0	0	0	50,000
Equipment	0	0	0	0	0	900,000	900,000
Other	0	0	0	0	0	0	0
Totals	0	50,000	0	0	350,000	1,000,000	1,400,000

FINANCING	Prior Year	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Water Fund	0	50,000	0	0	0	0	50,000
Water Line Extension Fund	0	0	0	0	350,000	1,000,000	1,350,000
Totals	0	50,000	0	0	350,000	1,000,000	1,400,000

FINANCE NOTES

Project created by City Council on June 16, 2015 with Budget Appropriation

*25C

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	400-2940 401-9517127-15-3899	$50,000 $ 50,000	400-3999 401-9517127-1-4800	$ 50,000 $50,000

Explain the reason for the budget change:

Background: On May 5, 2015, the City Council received a staff report on Water Supply Augmentation, and directed staff to develop a work plan tasks for conservation, recycled water, and ground water wells. The work plan for groundwater system expansion and conservation improvements has been completed for an estimated cost of $25 million. The State is currently developing several funding programs for potable water project, and anticipates receiving applications this summer for Proposition 1 and State Revolving Loan funds. Staff reviewed preliminary guidance information and that several documents are required to be prepared and submitted with the applications. WSI was selected from the City's list of consultant engineers to prepare these documents for the following reasons: WSI's recent experience of the preparation in the Water Supply Augmentation Feasibility Report and technical experience in water systems, design and operations, including underground wells.

The work consists of reviewing and/or preparing mechanical equipment, proposed Supervisory Control and Data Acquisition, (SCADA) for operations, and proposed water quality treatment for existing groundwater wells, well sitting, technical recommendations, environmental documents, mapping, preliminary design, construction cost estimates, and preparation of Proposition 1 funding application. Most of these documents are necessary for project design, even if the City
were not pursuing outside funding. The work also includes next step evaluations for the smart meter program and water leak detection system.

The work is estimated to cost $427,000. The well improvement portion is estimated to cost $327,000 and will be funded from Well Upgrade Project, CP No 7076. The Smart Meter work is estimated to cost $50,000 and will be funded from New CIP Automated Meter Replacement Project, CP No. 7121. It is necessary to create a new CIP Supervisory Control and Data Acquisition Project, CP No. 7127, and appropriate $50,000 for this work. The consultant agreement, CIP sheet project description, and a budget appropriation form are included in the Council packet.

California Environmental Quality Act (CEQA): This is not a project under CEQA as there will be no direct physical change or a reasonably foreseeable indirect change to the environment. Additionally, this is exempt under CEQA Guidelines Section 15262 (Feasibility and Planning Studies).

Alternative: The consultant agreement and budget appropriation are needed to prepare for the City's application for outside funding for planned groundwater well system expansion and conservation improvements. The project will not proceed if the agreement and appropriation are not approved.

Fiscal Impact: If the City is successful in receiving grant funding, the City will be reimbursed for our expenditures minus our matching funds required by the grant. The proposed water rates include costs for a $15 million bond program to begin the work. A budget appropriation from the Water Fund is necessary at this time to provide funding. The Water Fund and Well Upgrade Project would be reimbursed once the bond proceeds are available (anticipated to be early 2016). The proposed work will be funded as follows:

- Appropriate $50,000 from the Water Fund for a new Project No. 7127, Supervisory Control and Data Acquisition
- $50,000 from Project No. 7121, Automated Water Meter Replacement; there are sufficient funds in the project budget
- $327,000 from Project No.7076, Well Upgrade Project; there are sufficient funds in the project budget

Recommendations:

1. Approve the consultant agreement with Water Solutions, Inc. for engineering services in the amount of $427,000.
2. Approve a new Capital Improvement Project, Supervisory Control and Data Acquisition (SCADA), Project No. 7127.
3. Approve a budget appropriation in the amount of $50,000 from the Water Fund to Project 7127.

☒ **Check if City Council Approval required.** **Meeting Date**: June 16, 2015

Requested by:	Marilyn Nickel, Associate Civil Engineer	**Date:** June 5, 2015
Reviewed by:	**Finance Director:** Emma Kurber	**Date:** 6/8/15
Approved by:	**City Manager:**	**Date:**
Date approved by City Council, if required:		**Confirmed by:**

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

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
HYDRO SCIENCE ENGINEERS, 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 Hydro Science Engineers, Inc., a California corporation ("Consultant") as of June 16, 2015.

AGREEMENT

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

1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2016, 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. Consultant shall not make any changes to the specific personnel assigned under this Agreement without City written approval. 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 Fifty-One Thousand dollars ($51,000.00) 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, if any, 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 Jeffery Leung 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:

Curtis Lam, Vice-President
HydroScience Engineers
741 Allston Way
Berkeley, CA 94710

Any written notice to City shall be sent to:

Steven Machida, Director of Engineering
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Thomas C Williams, City Manager

CONSULTANT, Hydro Science Engineers, Inc.

Curtis Lam, Vice-President

APPROVED AS TO CONTENT:

Steven Machida, Director of Engineering

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

Taxpayer Identification Number:

94-3288991

Corporate Entity Number:

C2063417

EXHIBIT A

SCOPE OF SERVICES

General:
Through the City's consultant selection process, CONSULTANT has been selected to provide the technical and regulatory compliance support services for public water system and recycled water system. CONSULTANT agrees to complete each of the task outlined below in strict accordance with this Agreement and subject to City review and approval. Consultant shall not commence any task set forth below until the City issues a written Notice to Proceed for the applicable task.

CONSULTANT and the CITY recognize the importance of the need to maintain the CONSULTANT's key personnel throughout the entire duration of this Agreement. CONSULTANT shall not make any changes to the assigned personnel listed below without City written approval:

Principal, Mary Hoang
Principal, Curtis Lam

Project Understanding

The California Department of Public Health (CDPH) and United States Environmental Protection Agency (US EPA) regulates City of Milpitas as a public water system provider. The City has approximately 16,000 potable service connections and 180 recycled water service connections serving a population of about 70,000. CONSULTANT has the expertise to assist the CITY with compliance of the requirements. CONSULTANT shall provide on call service for compliance based on time and material.

Task 1: Provide on call technical and regulatory compliance support services of recycled water system such as recycled water permitting of sites.

The current statewide drought condition has a mandate to reduce potable water usage. City of Milpitas' goal of reduction includes converting City facilities to recycled water. A list of potential sites consisting of City facilities will be given to consultant. The City and consultant shall evaluate which sites shall be converted. The current sites to be converted includes: Escuela Parkway turf median, Sandalwood Park, Gill Park, and the Hetch Hetchy area by Gill Park adjacent to Shetland Court and Santa Rita Drive. The required documentation includes:

A) Preparing plans for CDPH approval
B) Performing cross-connection testing in accordance with SBWR requirements
C) Completing the SBWR construction inspection checklist

Each of these items is further discussed below.

Subtask 1A, Preparation of Recycled Water Plans for CDPH approval: CDPH approval requires submitting plans showing how recycled water is being used at each site in accordance with SBWR Rules and Regulations, and any construction modifications required to comply with

those requirements. CONSULTANT shall prepare drawings documenting how recycled water is being used for the site(s) to be specified by the City.

CONSULTANT shall prepare and format plans in accordance with City and SBWR standards, including the City supplement to the SBWR Rules and Regulations, and submit them to the City for their review. Once the City approves the plans, the City approved plans will be submitted to SBWR for approval. Once SBWR approves the plans, SBWR will submit the plans to CDPH for approval. CONSULTANT shall help facilitate plan review by the City, SBWR, and CDPH, and incorporate comments from each agency into the final plans for CDPH approval. CONSULTANT shall also respond to inquiries and questions as appropriate.

GENERAL REQUIREMENTS OF PLANS

1. CONSULTANT shall coordinate and manage sub-consultants throughout the term of the Agreement.

2. CONSULTANT shall be responsible for meeting the requirements of the City Building and Planning departments, for review local and state codes for zoning, building, and CEQA submittal and approval requirements as applicable.

3. Where applicable, the CONSULTANT shall design the Project in compliance with latest City, State, and Federal Storm Water Pollution Prevention, Stormwater Treatment Requirements "C3" and Erosion Control guidelines. CONSULTANT shall provide Erosion Control Plan details, guidelines and technical specification section for the Contractor use in preparing the project SWPPP and compliance with the State NOI requirements if the threshold of disturbed area is exceeded.

4. CONSULTANT shall prepare the Project Plans using the CITY's Standard Title Block to be located at the bottom right of each Plan sheet (City to provide title block in AutoCAD).

5. As applicable, Project Specifications shall be prepared using the CITY's standard front end (City to provide in Ms Word). CITY also has several Technical Specification Sections which are also standard that may be used on the project. If CONSULTANT uses CITY provided technical sections the CONSULTANT will be required to responsible for the design. All other technical specification sections shall be prepared by the CONSULTANT. The specifications shall be created in conformance with the current industry standard, Construction Specification Institute "CSI" format. The technical specifications shall be coordinated with the plans and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines. The construction documents shall conform to the applicable: Current California Building Codes as adopted by the City of Milpitas, National Fire Protection Association, Title 24, ADA, and all other applicable local, State and Federal codes, regulations, permit requirements, and conditions necessary for issuance of a the necessary permits for construction. The specifications shall include measurement and payment wording. CONSULTANT shall coordinate the inclusion of the technical specifications into the front-end specifications as one packet. CONSULTANT shall provide estimated construction costs in the form of the contractor bid proposal format. Unit cost items shall be used whenever possible.

The construction schedule shall be specified in working days or calendar days as approved by CITY.

6. Where applicable, CONSULTANT shall assist the CITY in coordination with utility companies including submittal of all necessary service applications. CONSULTANT shall provide all necessary information requested by utility companies. CONSULTANT shall incorporate all utility company comments into the design. CONSULTANT shall incorporate utility company review and approval times into the overall project schedule.

7. As applicable, Final plans ready for bidding shall be submitted wet signed/stamped hard copy and on compact disk (CD) in AutoCAD and PDF formats.

8. **Quality Control/Quality Assurance (QC/QA):**

   CONSULTANT shall prepare plans, specifications, estimates, calculations, and other documents 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 relating to this project:

   - Design 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 between the plans, specifications and estimated quantities;
   - QC program shall include field reviews and review of all pertinent materials to assure compatibility of design with existing facilities.

   CITY reviews of these documents shall not be considered part of the QC/QA program, but 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.

   Packages submitted for review by the CITY shall be accompanied by a QA/QC statement signed by a principal within the firm that they have reviewed the package and finds that is in compliance with Tasks 1 and 3 of this scope of work.

Deliverables:

- CDPH approved plans, 3 hard copies and 1 electronic copy (autocad, pdf)
- Signed QA/QC statement with each submittal of plans (1 hard copy and 1 pdf copy)

Subtask 1B, Cross-Connection Testing

This optional task requires separate written authorization by the City. CONSULTANT shall provide a Certified Cross-Connection Control Specialist to perform cross-connection testing complying with the SBWR Rules and Regulations at site(s).

Initially, a Visual Dual System Inspection will be performed that includes inspection of all meters to verify that no modifications were made, and that there are no visible cross-connections. Exposed piping will also be checked for the potential for direct and indirect cross-connections. CONSULTANT would then work with the City and City's water customer to schedule a time for the Cross-Connection Test, and provide the water customer with a 48-hour notification of the test. It is expected that the tests may be performed during nights or weekends in order to accommodate the needs of each water customer.

Subsequently, a Dual Shutdown Cross-Connection test compliant with the UPC and SBWR Rules and Regulations Appendix E will be performed by the Certified Cross-Connection Control Specialist. During this test, each water system (potable and recycled) will be shut down for a minimum of one hour each to verify whether the system is active or not.

Following the successful completion of the Cross-Connection Test, CONSULTANT shall provide a signed copy of the Cross-Connection Certification Form to be included with the Construction Inspection Checklist for each site.

CONSULTANT has assumed that the water customer will provide a facilities engineer who is knowledgeable about the water use at the property and who can provide access to all areas of their facility using water at a mutually agreed upon time for the performance of a cross-connection test. The water customer is assumed to also provide a landscape contractor knowledgeable about the customer irrigation system or approved CDPH plans. The City shall provide a representative to witness the cross-connection test.

Assumptions:

- The water customer and customer's landscape contractor will operate their water fixtures and irrigation system during performance of the Cross-Connection Test. These appurtenances will be operated under the supervision of the Certified Cross-Connection Control Specialist.
- The budget per site for cross-connection testing assumes that the cross connection test is for a "typical" site and complexity site. What makes a site typical may include the footprint, a limited number of tenants, or requiring alternate testing methods. If the expected cost for the cross-connection testing for any of the sites is deemed by Consultant to not be "typical" after initial review, Consultant will discuss next steps with the City prior to proceeding.
- City will provide contact information for water customer to receive notification form.
- City will witness the test as the recycled water retailer.

Deliverables (as applicable to each site):

- Completed Cross-Connection Test Notification Form (1 hard copy and 1 pdf copy)
- Completed Cross-Connection Test Certification Form (1 hard copy and 1 pdf copy)

- Pictures showing construction details, separation, or other relevant information(1 hard copy and 1 pdf copy)
- Summary of Cross-Connection activities completed and recommendation by Consultant (1 hard copy and 1 pdf copy)

Subtask 1C, Construction Inspection Checklists: Optional

This optional task requires separate written authorization by the City. For sites receiving recycled water, a Construction Inspection Checklist must be completed for each site. It is expected that the site will be constructed in accordance with the approved CDPH plans by others. Following CDPH approval of the plans and completion of any required construction, the Construction Inspection Checklist for that site can be completed. CONSULTANT shall complete the Construction Inspection Checklist for sites specified by the City, and document the following for each site:

- Preparation of plans for approval by CDPH (assumed to be performed by others except as noted)
- Designation of a Certified Site Supervisor. The Site Supervisor will be specified by the water customer and will be expected to either have SBWR certification as a Site Supervisor or attend a subsequent class.
- Verification of horizontal and vertical separation of recycled water and potable water lines. This verification will either be part of the cross-connection test performed by CONSULTANT or will be assumed to have occurred during the previous cross-connection certification. This contract does not include excavation by CONSULTANT on the water customer's property.
- Confirmation that advisory signs, tags, and labeling were installed in accordance with the CDPH approved plans. This will be done by visual inspection.
- Performance of a cross-connection test by a certified Cross-Connection Specialist (scoped as part of Task 2B).
- Completion of any additional CDPH requirements.
- Meter documentation and confirmation of removal of potable water connections (Note: CONSULTANT would document the status of the potable and recycled water connections).
- Verification that site is connected to recycled water meter.
- Performance of a coverage test in accordance with the SBWR Rules and Regulations. CONSULTANT will document the coverage of the existing irrigation system, coordinate any necessary repairs to the water customer's irrigation system with the customer, retest the system as appropriate, complete the Coverage Test form, and obtain the customer's signature on the required SBWR Coverage Test form.
- SBWR service number, meter location, meter number, and GPS locations

CONSULTANT is proposing to work with each water customer to complete required elements of the Checklist. CONSULTANT will also work with the City and/or SBWR to obtain and document information that may already be completed for each service.

It is assumed that the following will be provided by others:

- City will provide available information about each water customer where additional information is needed.

- City will provide primary contact information for water customer.
- City will provide CDPH approval letter and CDPH signed retrofit drawings for retrofit sites not designed by CONSULTANT.
- City and/or water customer will construct any necessary improvements to their site, including separation of potable and recycled water infrastructure, adding of signs or tags, or other requirements to comply with the SBWR Rules and Regulations.
- Water customer will provide the name and contact info for their designated Site Supervisor, who is already certified or will be trained by SBWR at a future Site Supervisor class.
- Water customer will have their landscape contractor present during the coverage test to operate and assist with the operation of their irrigation system.
- Water customer will perform any necessary repairs (at their cost) of their plumbing and/or irrigation system in order to pass the cross-connection test or coverage test.

Deliverables (as applicable to each site):

- Completed Construction Inspection Checklist (1 hard copy and 1 pdf copy)
- Completed Coverage Test Form (1 hard copy and 1 pdf copy)
- Summary report of construction and inspection activities completed by CONSULTANT (1 hard copy and 1 pdf copy)

All work shall be completed by December 31, 2016.

EXHIBIT B

COMPENSATION SCHEDULE

Project Budget

The proposed not-to-exceed fee for Task 1 of this scope of work is documented in **Table 1**. This budget will be expended based on the actual time and materials required to complete this scope of work. CONSULTANT shall invoice the City in accordance with CONSULTANT's standard rate attached below.

Table 1. Fee Budget Schedule

Task	Description	Fee
Task 1, Recycled water	1A: Preparation of Plans for CDPH Approval - @ $10,000 per site	$44,000
	1B: Cross Connection Testing - @ $2,250 per site	$7,000
	1C: Construction Inspection Checklists - @ $2,000 per site	Not anticipated
	TOTAL:	**$51,000**

It is further distributed as follows:

Location	Cross streets	Notes	1A, Plans, $	1B, Cross Conn. Testing, $
Sandalwood Park	Russell Lane to Kevenaire Drive	Interconnect three irrigation systems to existing angle stop. Two drinking fountains.	16,000	1,500
Kevenaire Drive to Jacklin Road	Kevenaire Drive to Jacklin Road	Add new service and connect trail to new RW service	5,000	1,500
Peter Gill Park	Jacklin Road to Tramway Drive	Interconnect Hetch Hetchy Trail to Gill Park irrigation system,	7,000	1,500

		which is on recycled water already		
Beresford Park	Tramway Drive to Paseo Refugio	Retrofit park and Hetch Hetchy trail and verify separation of fountains and restrooms	16,000	2,500

2015

HYDROSCIENCE ENGINEERS, INC.

Standard Schedule of Billing Rates

Effective January 1, 2015 through December 31, 2015

Labor Classification	Hourly Rate
Principal	$200
Engineer VIII	$190
Engineer VII	$175
Engineer VI	$165
Engineer V	$155
Engineer IV	$145
Engineer III	$135
Engineer II	$120
Engineer I	$105
Engineering Aide	$65
Construction Professional VI	$150
Construction Professional V	$140
Construction Professional IV	$130
Construction Professional III	$120
Construction Professional II	$110
Construction Professional I	$95
CAD Designer II	$90
CAD Designer I	$80
Administrative II	$65
Administrative	$50

Hourly billing rates include postage and telephone charges that are normal to the work authorized. Other direct costs for travel, reproduction, mail service, outside services, etc. will be invoiced at 110 percent of the actual cost.

EXHIBIT C

INSURANCE DOCUMENTS

Attached certificates below.

Recycled Water Conversions

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 5/28/2015

PRODUCER

KRAFT INSURANCE BROKERAGE
2040 Shasta Street, Ste C
Redding, CA 96001
(530) 605-4780

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Hydroscience Engineers, Inc.
10569 Old Placerville Road
Sacramento, CA 95827

INSURERS AFFORDING COVERAGE	NAIC#
INSURER A: Travelers Indemnity of Connect	25682
INSURER B: American Fire & Casualty Company	24066
INSURER C: Continental Casualty Company	20443
INSURER D: Travelers Property Casualty Co of Amer.	25674
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	Y	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER X POLICY PRO-JECT LOC	680 6905L265TL	12/18/14	12/18/15	EACH OCCURRENCE	$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurence)	$ 100,000
						MED EXP (Any one person)	$ 10,000
						PERSONAL & ADV INJURY	$ 1,000,000
						GENERAL AGGREGATE	$ 2,000,000
						PRODUCTS - COMP/OP AGG	$ 2,000,000
						Deductible:	$500.00
B	Y	AUTOMOBILE LIABILITY ANY AUTO x ALL OWNED AUTOS SCHEDULED AUTOS x HIRED AUTOS x NON-OWNED AUTOS	BAA(16)56353680	2/9/15	2/9/16	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT	$
						OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
A		EXCESS/UMBRELLA LIABILITY X OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $	680 6905L265TL	12/18/14	12/18/15	EACH OCCURRENCE	$ 4,000,000
						AGGREGATE	$
							$
							$
							$
D		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	XJUB4231T09-A-15	3/1/15	3/1/16	X WC STATU-TORY LIMITS OTH-ER	
						E.L. EACH ACCIDENT	$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	$ 1,000,000
C		OTHER Professional Liability	AEH288365407	12/18/14	12/18/15	$5,000,000 per claim $5,000,000 aggregate	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Project: Recycled water services. *City and its officers, employees, agents, contractors and consultants 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 or consultants.

CERTIFICATE HOLDER

City of Milpitas
Public Works Director / City Engineer
455 East Calaveras Blvd.
Milpitas, CA 95035

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~XXXXXXXXXXXX~~ TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2001/08)

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HSE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to **WHO IS AN INSURED (Section II):**

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

a. In the performance of your ongoing operations;

b. In connection with premises owned by or rented to you; or

c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.

e. This insurance does not apply to the rendering of or failure to render any "professional services".

f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF INSURANCE (Section III)** for this Coverage Part.

B. The following is added to Paragraph **a.** of **4. Other Insurance** in **COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

(1) The "bodily injury" or "property damage" for which coverage is sought occurs; and

(2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** in **COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

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injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to **DEFINITIONS (Section V):**

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

a. After you have entered into that contract or agreement;

b. While that part of the contract or agreement is in effect; and

c. Before the end of the policy period.

Insured: Hydroscience Engineers, Inc.
Policy No.: 6806905L265TL

Insurance Company:
Travelers Indemnity of Connecticut

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TRAVELERS

ONE TOWER SQUARE
HARTFORD, CT 06183

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 (A) – 001

POLICY NUMBER: (XJUB-4231T09-A-15)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT – CALIFORNIA (BLANKET WAIVER)

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

The additional premium for this endorsement shall be 03.00 % of the California workers' compensation premium.

Schedule

Person or Organization	Job Description
ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS WAIVER.	

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

DATE OF ISSUE: 01-15-15 **ST ASSIGN:**

Hydroscience Engineers, Inc.
BAA(16)56353680

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

COVERAGE INDEX

SUBJECT	PROVISION NUMBER
ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT	3
ACCIDENTAL AIRBAG DEPLOYMENT	12
AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS	19
AMENDED FELLOW EMPLOYEE EXCLUSION	5
AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE	13
BROAD FORM INSURED	1
BODILY INJURY REDEFINED	22
EMPLOYEES AS INSUREDS (including employee hired auto)	2
EXTENDED CANCELLATION CONDITION	23
EXTRA EXPENSE - BROADENED COVERAGE	10
GLASS REPAIR - WAIVER OF DEDUCTIBLE	15
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SECTION II - LIABILITY COVERAGE is amended as follows:

1. **BROAD FORM INSURED**

   SECTION II - LIABILITY COVERAGE, paragraph **A.1.** - WHO IS AN INSURED is amended to include the following as an insured:

   d. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period. However, "insured" does not include any organization that:

   (1) Is a partnership or joint venture; or

   (2) Is an insured under any other automobile policy; or

   (3) Has exhausted its Limit of Insurance under any other automobile policy.

   Paragraph **d. (2)** of this provision does not apply to a policy written to apply specifically in excess of this policy.

   e. Any organization you newly acquire or form, other than a partnership or joint venture, of which you own more than 50 percent of the voting stock. This automatic coverage is afforded only for 180 days from the date of acquisition or formation. However, coverage under this provision does not apply:

   (1) If there is similar insurance or a self-insured retention plan available to that organization;

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(2) If the Limits of Insurance of any other insurance policy have been exhausted; or

(3) To "bodily injury" or "property damage" at occurred before you acquired or formed the organization.

2. EMPLOYEES AS INSUREDS

SECTION II - LIABILITY COVERAGE, paragraph **A.1.** - WHO IS AN INSURED is amended to include the following as an insured:

f. Any "employee" of yours while using a covered "auto" you do not own, hire or borrow, but only for acts within the scope of their employment by you. Insurance provided by this endorsement is excess over any other insurance available to any "employee".

g. An "employee" of yours while operating an "auto" hired or borrowed under a written contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business and within the scope of their employment. Insurance provided by this endorsement is excess over any other insurance available to the "employee".

3. ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT

SECTION II - LIABILITY COVERAGE, paragraph **A.1.** - WHO IS AN INSURED is amended to include the following as an insured:

h. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed in a written contract, agreement, or permit issued to you by governmental or public authority, to add such person, or organization, or governmental or public authority to this policy as an "insured".

However, such person or organization is an "insured":

(1) Only with respect to the operation, maintenance or use of a covered "auto";

(2) Only for "bodily injury" or "property damage" caused by an "accident" which takes place after you executed the written contract or agreement, or the permit has been issued to you; and

(3) Only for the duration of that contract, agreement or permit

4. SUPPLEMENTARY PAYMENTS

SECTION II - LIABILITY COVERAGE, Coverage Extensions, **2.a.** Supplementary Payments, paragraphs **(2)** and **(4)** are replaced by the following:

(2) Up to $3,000 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the insured at our request, including actual loss of earnings up to $500 a day because of time off from work.

5. AMENDED FELLOW EMPLOYEE EXCLUSION

In those jurisdictions where, by law, fellow employees are not entitled to the protection afforded to the employer by the workers compensation exclusivity rule, or similar protection, the following provision is added:

SECTION II - LIABILITY, exclusion **B.5.** FELLOW EMPLOYEE does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

SECTION III - PHYSICAL DAMAGE COVERAGE is amended as follows:

6. HIRED AUTO PHYSICAL DAMAGE

Paragraph **A.4.** Coverage Extensions of SECTION III - PHYSICAL DAMAGE COVERAGE, is amended by adding the following:

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss or Collision coverage are provided under the Business Auto Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos":

a. You hire, rent or borrow; or

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To the extent possible, notice to us should include:

(1) How, when and where the "accident" or "loss" took place;

(2) The "insureds" name and address; and

(3) The names and addresses of any injured persons and witnesses.

20. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph **A.5.**, Transfer of Rights of Recovery Against Others to Us, is amended by the addition of the following:

If the person or organization has waived those rights before an "accident" or "loss", our rights are waived also.

21. HIRED AUTO COVERAGE TERRITORY

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph **B.7.**, Policy Period, Coverage Territory, is amended by the addition of the following:

f. For "autos" hired 30 days or less, the coverage territory is anywhere in the world, provided that the insured's responsibility to pay for damages is determined in a "suit", on the merits, in the United States, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

This extension of coverage does not apply to an "auto" hired, leased, rented or borrowed with a driver.

SECTION V - DEFINITIONS is amended as follows:

22. BODILY INJURY REDEFINED

Under SECTION V - DEFINTIONS, definition **C.** is replaced by the following:

"Bodily injury" means physical injury, sickness or disease sustained by a person, including mental anguish, mental injury, shock, fright or death resulting from any of these at any time.

COMMMON POLICY CONDITIONS

23. EXTENDED CANCELLATION CONDITION

COMMON POLICY CONDITIONS, paragraph **A.** - CANCELLATION condition applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation. This provision does not apply in those states which require more than 60 days prior notice of cancellation.

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C. **Your** Rights and Duties in the Event of a **Circumstance**

If **you** report a **circumstance** for which there may be coverage under this Policy, and **you** give us written notice containing as much detail as **you** can reasonably provide regarding:

1. what happened and the **professional services** or activities **you** performed;

2. the nature of any possible injury or damages; and

3. how and when **you** first became aware of such **circumstance**;

then any **claim** or **related claims** that subsequently may be made against **you** arising out of such **circumstance** shall be deemed to have been made on the date we received written notice of the **circumstance**.

You will cooperate with us in addressing the **circumstance**, and refuse, except solely at **your** own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense without our prior written approval.

D. Subrogation

If any of **you** have rights to recover amounts from another, those rights are transferred to us to the extent of our payment. **You** must do everything necessary to secure these rights and must do nothing after a **claim** is made to jeopardize them. We hereby waive subrogation rights against **your** client to the extent that **you** had a written agreement to waive such rights prior to a **claim** or **circumstance**.

E. Premium

All premium charges under this Policy will be computed according to the rules, rates and rating plans that apply at the effective date of the current **policy term**.

F. Examination and Audit

You agree to allow us to examine and audit **your** financial books and records that relate to this insurance. We may do this at any time during the **policy term** or any extensions, and up to three years after the end of the **policy term**.

Recycled Water Conversions

*27

AMENDMENT No. 1 TO AGREEMENT FOR CONSULTATION AND OTHER SERVICES

This Amendment is entered into this 16th 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 Biggs Cardosa Associates Inc., a California Corporation (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an agreement on December 3, 2014 for professional design services for the conversion of existing manual fire doors to electric systems in the amount of Seventeen Thousand Dollars ($17,000.00) ("Agreement"); and

WHEREAS, the parties desire to amend the Agreement to allow CONSULTANT to provide additional design and testing services for the installation of a new electric sub panel and circuits as required for the new door motors and a future electric vehicle charging station within the parking garage, and for bidding and construction support services.

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

1. Section 1.1, entitled "Term of Services" of the Agreement is amended in its entirety to read as follows:

   "Term of Services. The term of this Agreement shall begin on the date first noted above and shall end on June 17, 2016, the date of completion specified in Exhibit A and Exhibit A-1, and Consultant shall complete all the work described in Exhibit A and Exhibit A-1 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:

   "**COMPENSATION.** City hereby agrees to pay Consultant an amount not to exceed Twenty-Three Thousand Nine Hundred Dollars ($23,900.00) 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 and Exhibit B-1. 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 A, entitled "Scope of Services" of the Agreement is amended to include the additional Scope of Services set forth in the attached Exhibit A-1, incorporated fully herein by reference.

4. Exhibit B, entitled "Compensation Schedule" of the Agreement is amended to include the additional compensation set forth in the attached Exhibit B-1, 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 **December 3, 2014**, between **Biggs Cardosa Associates, Inc.** and the City of Milpitas. The Consultant shall provide the City with renewal certificates of the current policies upon the expiration of the current policy.

6. 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

_____
Biggs Cardosa Associates, Inc.

_____
Steven Machida, Director of Engineering/
City Engineer as to work specifics

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

Exhibit A-1

Consultant shall provide additional engineering services on the subject project as further described herein. The additional services are for taking 30 day load readings at the existing electrical panel to determine if enough electrical capacity is available for the new door motors, providing new electrical circuits to accommodate the roll-up door motors and the future electric vehicle charging station, and to provide construction support services for the entire project. The following is the additional scope of services.

Task 2 Preliminary Design:

- Perform site visit to review existing conditions.
- Install electrical panel load recording equipment, test and monitor equipment for a period of 30 days.

Deliverables:

- Provide a 30 day electrical load panel readings.
- Provide a report and chart of the readings and recommendations.

Task 3 Final Design

- Include new electric sub panel design for the roll-up door motors as well as required breakers and conduit and wire sizes for the future EV charging stations in the mechanical and electrical drawings and specifications in the 95% and 100% complete submittals.

Deliverables:

- Mechanical and Electrical design drawings and construction Specifications for the installation of the new electrical sub panel with breakers for the roll-up door motors and the EV breakers. Drawings will include the design for the required conduit and wire runs.

Task 4 Construction Support

As requested by the City, Consultant will perform the following:

- Review submittals required by Specifications supplied through and checked by the General Contractor, for general compliance with the intent and requirements of the structural portion of the Contract Documents.
- Review and respond to contractor's requests for information.
- Perform site visit during construction (1 maximum).
- Provide Record Drawings based on contractor’s redmarked As-Built drawings at the end of construction.

Deliverables:

- As requested by the City, provide responses to Contractor shop drawings and submittals, and requests for information.
- Provide one site visit during construction.
- Provide final hard copy record drawing set based upon the Contractors as-built drawings at the conclusion of construction.

Assumptions

- Load reading is limited to one panel.
- Access to the panel will be provided.
- The City of Milpitas will provide requirements for the future EV charge stations.
- Construction submittals and RFIs will be limited to three maximum each.

Exclusions

Exclusions as set forth the original Agreement dated December 3, 2014 remain applicable.

Exhibit B-1
Fee

The following fee schedule shall apply to the additional Scope of Services in Exhibit A-1:

Phase		Fee
Task 2	Preliminary Design	$ 2,200.00
Task 3	Final Design	$ 2,700.00
Task 4	Construction Support	$ 2,000.00
Total Not to Exceed		**$ 6,900.00**

CITY OF MILPITAS

MILPITAS SPORTS CENTER POOL REPAIRS PROJECT

PROJECT NUMBER 3408

APRIL 28, 2015

1325 EAST CALAVERAS BLVD. MILPITAS, CA 95035

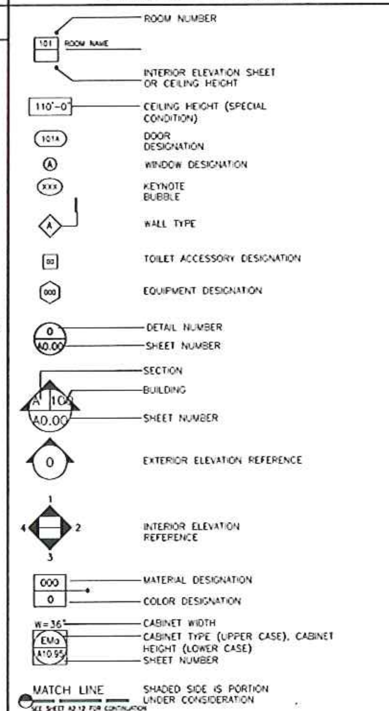
*28A

ABBREVIATIONS

NOTE: ALL ABBREVIATIONS IN THIS LIST DO NOT NECESSARILY OCCUR ON THIS PROJECT.

A	ACCESSIBLE
AB	ANCHOR BOLT
ABV	ABOVE
AC	ASPHALT CONCRETE
A/C	AIR CONDITIONING
ACOUS	ACOUSTICAL
ADD	ADDENDUM
ADJ	ADJUSTABLE/ADJACENT
AGG	AGGREGATE
ALT	ALTERNATE
ALUM	ALUMINUM
APP	APPROVED
APPROX	APPROXIMATE
BB	BOTTOM OF BEAM
BD	BOARD
BEL	BELOW
BLDG	BUILDING
BLK	BLOCK
BLKG	BLOCKING
BM	BEAM
BOT	BOTTOM
BRG	BEARING
BRZ	BRONZE
BUR	BUILT UP ROOFING
C	CARPET
CAB	CABINET
CB	CATCH BASIN OR CEMENT BOARD
CEM	CEMENT
CER	CERAMIC
CF	CUBIC FOOT
CFL	COUNTERFLASHING
CHAM	CHAMFER
CHBD	CHALKBOARD
CI	CAST IRON
CJ	CEILING JOIST
C.JT	CONTROL JOINT
CLG	CEILING
CT	CERAMIC MOSAIC (TILE)
CMU	CONCRETE MASONRY UNIT
CNTR	COUNTER
CO	CLEAN OUT
COL	COLUMN
COMB	COMBINATION
COMPO	COMPOSITION (COMPOSITE)
CONC	CONCRETE
CONT	CONTINUOUS OR CONTINUE
CONST	CONSTRUCTION
CORR	CORRUGATED
COTF	CLEAN OUT THRU FLOOR
COTG	CLEAN OUT TO GRADE
COTW	CLEAN OUT THRU WALL
CR	CURB RETURN
CSK	COUNTERSINK
CSMT	CASEMENT
CTSK	COUNTERSUNK SCREW
CTR	CENTER
CW	COLD WATER
DET	DETAIL
DF	DRINKING FOUNTAIN
DIA	DIAMETER
DIAG	DIAGONAL
DIM	DIMENSION
DIV	DIVISION
DPRS	DEPRESSED
DR	DOOR
DS	DOWNSPOUT
DSPR	DISPENSER
DWG	DRAWING
E	ENAMEL
EA	EACH
EDF	ELECTRIC DRINKING FOUNTAIN
EJ	EXPANSION JOINT
ELEV	ELEVATION
ELEC	ELECTRIC
ELECT	ELECTRICAL
EMER	EMERGENCY
ENAM	ENAMEL
ENCL	ENCLOSE (URE)
EQ	EQUAL
EQPT	EQUIPMENT
EXH	EXHAUST
EXP	EXPOSED
EXIST	EXISTING
(E)	EXISTING
EXT	EXTERIOR
FAB	FABRICATION
FAC	FACTORY
FAS	FASTEN, FASTENER
FBD	FIBERBOARD
FBGL	FIBERGLASS
FBLK	FIRE BLOCKING
FBO	FURNISHED BY OTHERS
FD	FLOOR DRAIN
FF	FINISHED FLOOR
FG	FIXED GLASS
FHMS	FLATHEAD MACHINE SCREW
FHWS	FLATHEAD WOOD SCREW
FIN	FINISH (ED)
FJ	FLOOR JOIST
FLR	FLOOR (ING)
FLUOR	FLUORESCENT
FLX	FLEXIBLE
FND	FOUNDATION
FOC	FACE OF CONCRETE
FOF	FACE OF FINISH
FOM	FACE OF MASONRY
FOP	FACE OF PLYWOOD SHEATHING
FOS	FACE OF STUDS
FR	FRAME (D), (ING)
FTG	FOOTING
FURR	FURRED (ING)
FUT	FUTURE
GA	GAGE, GAUGE
GB	GYPSUM BOARD
GD	GRADE, GRADING
GI	GALVANIZED IRON
GKT	GASKET (ED)
GL	GLASS, GLAZING
GLV	GALVANIZED
GSM	GALVANIZED SHEET METAL
GVL	GRAVEL
GYP	GYPSUM
HB	HOSE BIBB
HC	HOLLOW CORE
HDB	HARDBOARD
HDR	HEADER
HDW	HARDWOOD
HEX	HEXAGONAL
HM	HOLLOW METAL STEEL
HOR	HORIZONTAL
HT	HEIGHT
HTG	HEATING
HVAC	HEATING/VENTILATING/ AIR CONDITIONING
HW	HOT WATER
ID	INSIDE DIAMETER
INCL	INCLUDE (D), (ING)
INSTR	INSTRUCTION (S)
INSUL	INSULATE (D), (ION)
INT	INTERIOR
INV	INVERT
JST	JOIST
JT	JOINT
KO	KNOCKOUT
LAD	LADDER
LAM	LAMINATE (D)
LAV	LAVATORY
LB	LAG BOLT
MAX	MAXIMUM
MB	MACHINE BOLT
MECH	MECHANIC (AL)
MED	MEDIUM
MFG	MANUFACTURING
MFR	MANUFACTURE (R)
MIN	MINIMUM
MIR	MIRROR
MISC	MISCELLANEOUS
MKBD	MARKER BOARD
MLD	MOLDING, MOULDING
MMB	MEMBRANE
MO	MASONRY OPENING
MOD	MODULAR
MT	METAL THRESHOLD
MNT	MOUNT (ED), (ING)
MTL	METAL
MUL	MULLION
(N)	NEW
NAT	NATURAL
NIC	NOT IN CONTRACT
NO	NUMBER
NOM	NOMINAL
NTS	NOT TO SCALE
O/	OVER
OA	OVERALL
OBS	OBSCURE
OC	ON CENTER (S)
OD	OUTSIDE DIAMETER
OFD	OVERFLOW DRAIN
OFCI	OWNER FURNISHED, CONTRACTOR INSTALLED
OFOI	OWNER FURNISHED, OWNER INSTALLED
OH	OVERHEAD
OPQ	OPAQUE
OPG	OPENING
OPP	OPPOSITE
OPT	OPTIONAL
PAF	POWDER-ACTUATED FASTENER
PBD	PARTICLE BOARD
PERIM	PERIMETER
PERF	PERFORATE (D)
PFB	PREFABRICATE (D)
PL	PROPERTY LINE
PLAM	PLASTIC LAMINATE
PLAS	PLASTER
PLT	PLATE
PLWD	PLYWOOD
PNL	PANEL
PNT	PAINT (ED)
POC	POINT OF CONNECTION
PT	POINT, PAINT OR PRESERVATIVE TREATED
PTDF	PRESERVATIVE TREATED DOUGLAS FIR
PTN	PARTITION
PSL	PARALLEL STRAND LUMBER
PVA	POLYVINYL ACETATE
PVC	POLYVINYL CHLORIDE
R	RISER
RD	ROOF DRAIN
REF	REFERENCE
REFR	REFRIGERATOR
REINF	REINFORCE (D), (ING)
REM	REMOVE
REQ'D	REQUIRED
RES	RESILIENT
RET	RETURN
REV	REVISION (S), REVISED
RFG	ROOFING
RFL	REFLECT (ED), (IVE), (OR)
RH	RIGHT HAND
RL	RIDGE LINE
RM	ROOM
RO	ROUGH OPENING
ROW	RIGHT OF WAY
RDWD	REDWOOD
RWL	RAINWATER LEADER
SC	SOLID CORE
SCH	SCHEDULE
SD	STORM DRAIN
SEC	SECTION
SHLF	SHELF
SHLV	SHELVING
SHT	SHEET
SHTG	SHEATHING
SIM	SIMILAR
SKL	SKYLIGHT
S/P	SHELF & POLE
SPEC	SPECIFICATION (S)
SQ	SQUARE
SS	STAINLESS STEEL
STD	STANDARD
STL	STEEL
STG	STORAGE
STRUC	STRUCTURE/STRUCTURAL
STSMS	SELF-TAPPING SHEET METAL SCREW
SV	SHEET VINYL
SYS	SYSTEM
T	TREAD
TB	TOWEL BAR
T&B	TOP & BOTTOM
TELE	TELEPHONE
TEMP	TEMPERED
T&G	TONGUE-AND-GROOVE
THK	THICK (NESS)
THRU	THROUGH
TJ	TOOL JOINT
TKBD	TACKBOARD
TM	TOP OF MASONRY
TOB	TOP OF BEAM
TOC	TOP OF CURB or CONCRETE
TP	TOILET PAPER DISPENSER
TPTN	TOILET PARTITION
TS	TOP OF SHEATHING
TSB	TOP SET BASE
TSL	TOP OF SLAB
T&T	T-BAR ACOUSTIC TILE
TV	TELEVISION
TYP	TYPICAL
TW	TOP OF WALL
TWS	TACKABLE WALL SYSTEM
UON	UNLESS OTHERWISE NOTED
VAR	VARIES
VB	VAPOR BARRIER
VCT	VINYL COMPOSITION TILE
VCTB	VINYL COVERED TACKBOARD
VERT	VERTICAL
VFY	VERIFY
VG	VERTICAL GRAIN
VIF	VERIFY IN FIELD
VNR	VENEER
VO	VENT OVER/OFFSET
VR	VENT RISER
VTR	VENT THROUGH ROOF
VWC	VINYL WALL COVERING
W/	WITH
WC	WATER CLOSET
WD	WOOD
WFG	WIRED FIXED GLASS
WHC	WALL HUNG CABINET
WI	WROUGHT IRON
WIN	WINDOW
WM	WIRE MESH
W/O	WITHOUT
WO	WHERE OCCURS
WP	WATERPROOFING
WS	WOOD SCREW
WSCT	WAINSCOT
WST	WASTE
WWF	WELDED WIRE FABRIC

SYMBOL LEGEND



GENERAL NOTES

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CALIFORNIA CODE OF REGULATIONS (TITLE DOCUMENTS) AND ALL OTHER LOCAL CODES AND ORDINANCES OF THE GOVERNING AUTHORITY HAVING JURISDICTION AND AS IDENTIFIED UNDER APPLICABLE CODES ON THIS SHEET. IT IS THE INTENT OF THESE DOCUMENTS TO COMPLY HERETO.
2. ALL DRAWINGS SHALL BE USED IN CONCERT WITH EACH OTHER. IF THE CONTRACTOR DISCOVERS ANY DISCREPANCY BETWEEN THE DOCUMENTS, THE CONTRACTOR SHALL REQUEST IN WRITING A CLARIFICATION FROM THE ARCHITECT. REFER TO THE ARCHITECTURAL AND ENGINEERING DRAWINGS FOR PLACEMENT, ORIENTATION AND COORDINATION OF WORK. INFORMATION SHOWN IN LARGER SCALE IS INTENDED TO SUPPLEMENT INFORMATION OF SMALLER, PRECEDING REFERENCE DRAWINGS. LARGER SCALE DRAWINGS TAKE PRECEDENCE OVER SMALLER SCALE DRAWINGS.
3. NOTATIONS MARKED "TYPICAL" (TYP.) SHALL BE CONSISTENT THROUGHOUT ALL SUCH REFERENCE NOMENCLATURE, SYMBOLS AND DRAWING INDICATIONS OF LIKE OR SIMILAR KIND.
4. DO NOT SCALE DRAWINGS. THE CONTRACTOR SHALL FIELD VERIFY CONSTRUCTION CONDITIONS AND DIMENSIONS PRIOR TO ORDERING, FABRICATING OR INSTALLING ANY ASSOCIATED WORK. IF DISCREPANCIES ARE FOUND, THE CONTRACTOR SHALL REQUEST IN WRITING A CLARIFICATION FROM THE ARCHITECT PRIOR TO COMMENCEMENT OF ANY ASSOCIATED WORK.
5. CONTRACTOR SHALL VERIFY, AT THE SITE, ALL EXISTING CONDITIONS PRIOR TO SUBMITTAL OF BIDS. SITE VISITS DURING BIDDING SHALL BE COORDINATED WITH THE OWNER IN ACCORDANCE WITH THE PROVISIONS OF THE SPECIFICATIONS.
6. CONTRACTOR SHALL PROTECT ALL EXISTING WORK. ANY DAMAGED WORK SHALL BE REPLACED WITH THE SAME MATERIALS, INCLUDING MATCHING THE EXISTING COLORS AND TEXTURES.
7. EXISTING WORK IS SHOWN FOR REFERENCE ONLY. THE OWNER AND/OR ARCHITECT DO NOT GUARANTEE EXISTING CONDITIONS AS SHOWN ON THESE DOCUMENTS.
8. CONTRACTOR(S) SHALL BE RESPONSIBLE FOR THEIR OWN CLEANUP AS WORK PROGRESSES.
9. MATERIALS SUSPECTED OF CONTAINING HAZARDOUS MATERIALS THAT ARE DISCOVERED DURING THE PROGRESS OF THE WORK SHALL BE REPORTED TO THE OWNER IN WRITING. WORK IN THAT PARTICULAR AREA SHALL BE SUSPENDED UNTIL THE OWNER TESTS THE SUSPECT MATERIAL AND IT IS FOUND TO BE SAFE, OR THE MATERIAL HAS BEEN PROPERLY ABATED.
10. ALL WORK IS NEW UNLESS OTHERWISE NOTED.
11. IN THE EVENT CERTAIN FEATURES OF THE CONSTRUCTION ARE NOT FULLY SHOWN ON THE CONSTRUCTION DOCUMENTS, THEN THEIR CONSTRUCTION SHALL BE OF THE SAME CHARACTER AS FOR SIMILAR CONDITIONS THAT ARE SHOWN.
12. STORAGE OF CONSTRUCTION MATERIAL AND EFFECT OF WORK ON EXISTING OCCUPIED AREAS SHALL BE APPROVED BY THE LOCAL FIRE AUTHORITY.
13. CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATION OF ALL WORK PROVIDED BY OTHERS UNDER SEPARATE CONTRACT.
14. KEYNOTES USED ON THE ARCHITECTURAL DRAWINGS ARE FOR ASSEMBLIES, MATERIAL REFERENCES AND NOTES. REFER TO THE KEYNOTE LIST ON THE RESPECTIVE DRAWING FOR THE INFORMATION WHICH RELATES TO EACH KEYNOTE.
15. PRIME CONTRACTOR BIDDING ON THIS PROJECT SHALL POSSESS A CLASS C-53 SWIMMING POOL LICENSE FROM THE CONTRACTORS STATE LICENSE BOARD.

APPLICABLE CODES

CALIFORNIA CODE OF REGULATIONS, TITLE 24 – BUILDING STANDARDS

- *2013 CALIFORNIA ADMINISTRATIVE CODE (CAC) (Title 24, Part 1, CCR)
  - At Chaper 10, 2010 California Building Standards Administrative Code (Title 24, Part 1) applies.
- *2013 CALIFORNIA BUILDING CODE (CBC), Volumes 1 & 2 (Title 24, Part 2, CR) (2012 International Building Code with 2013 California Amendments)
- *2013 CALIFORNIA ELECTRICAL CODE (CEC) (Title 24, Part 3, CCR) (2011 National Electrical Code with 2013 California Amendments)
- *2013 CALIFORNIA MECHANICAL CODE (CMC), Title 24, Part 4, CCR) (2012 Uniform Mechanical Code with 2013 California Amendments)
- *2013 CALIFORNIA PLUMBING CODE (CPC), Title 24, Part 5, CCR) (2012 Uniform Plumbing Code with California Amendments)
- *2013 CALIFORNIA ENERGY CODE, (Title 24, Part 6, CCR)
- *2013 CALIFORNIA HISTORICAL BUILDING CODE, (Title 24, Part 8, CCR)
- *2013 CALIFORNIA FIRE CODE (CFC), Title 24, Part 9, CCR) (2012 International Fire Code with California Amendments)
- *2013 CALIFORNIA EXISTING BUILDING CODE, (Title 24, Part 10, CCR)
- *2013 CALIFORNIA GREEN BUILDING STANDARDS CODE (CALGREEN), Title 24, Part 11, CCR)
  - 2010 California Green Building Standards Code applies at those portions designated by California Building Standards Commision.
- *2013 CALIFORNIA REFERENCE STANDARDS CODE, (Title 24, Part 12, CCR)
- *2010 ADA STANDARDS FOR ACCESSIBILITY DESIGN, U.S. Department of Justice.
- *2013 NFPA 13, STANDARD FOR THE INSTALLATION OF SPRINKLER SYSTEMS, 2013 Edition.
- *2013 NFPA 72, NATIONAL FIRE ALARM CODE AND SIGNALING CODE, 2013 Edition.

NOTE: SOME CODES MAY NOT APPLY IF WORK REGULATED BY SUCH CODES IS NOT WITHIN THE SCOPE OF THIS PROJECT.

* AS ADOPTED BY THE CITY OF MILPITAS

SCOPE OF WORK

THE FOLLOWING IS A BRIEF DESCRIPTION OF THE SCOPE OF WORK: CONTRACTOR SHALL DETERMINE/ VERIFY THE ENTIRE SCOPE AS SHOWN IN THE DRAWINGS AND SPECIFICATIONS PRIOR TO SUBMITTING BIDS.

1. REPLACE CONCRETE POOL DECK.
2. REPAIR AND RESURFACING (INCLUDING TILE REPLACEMENT), OF 25-METER, 25-YARD, AND TRAINING POOLS.
3. REPLACEMENT OF STAIRS AND RAMPS IN POOLS, LIFEGUARD STANDS, AND DIVING PLATFORMS.
4. UPGRADE POOL LIGHTING TO LED FIXTURES AND REPLACE CONDUITS.
5. INSTALL POOL DECK SHOWERS.
6. REMOVAL OF WADING POOL.
7. INSTALLATION OF SHADE STRUCTURES.
8. REPLACEMENT OF PIPES IN TUNNEL FROM PUMP ROOM TO POOL DECK AND POOL DECK TANKS TO POOLS.
9. NEW SURGE TANK LIDS AND TANK REPAIRS.
10. REPLACEMENT OF POOL FLOW VALVES.

SHEET INDEX

A0.01 TITLE SHEET

CIVIL
C1.1 COVER SHEET
C2.1 PAVEMENT & TRENCH DEMOLITION PLAN
C3.1 GRADING AND DRAINAGE PLAN
C3.2 PAVEMENT PLAN
C4.1 UTILITY PLAN
C5.1 EROSION PLAN
C5.2 EROSION DETAILS
C6.1 NOTES
C7.1 DETAILS

ARCHITECTURAL
A1.10 CONSTRUCTION ACCESS PLAN
A1.11 SITE PLAN
A1.12D DEMOLITION SITE PLAN
A1.12 POOL DECK HARDSCAPE PLAN
A1.13 ENLARGED SITE PLAN
A1.14 ENLARGED SITE PLAN
A10.10 DETAILS

POOL CONSULTANT
DP-1 EXISTING DECK/POOL DEMOLITION PLAN
LP-1 UNDERWATER LIGHTING PLAN
PP-1 PIPING PLAN
SP-1 25M SWIMMING POOL LAYOUT PLAN
SP-2 25M SWIMMING POOL SECTIONS
SP-3 25YD SWIMMING POOL LAYOUT PLAN
SP-4 25YD SWIMMING POOL SECTIONS
SP-5 TRAINING POOL LAYOUT PLAN/SECTIONS
SP-6 DETAILS
SP-7 DETAILS
SP-8 DETAILS
SP-9 DETAILS

PLUMBING
P0.1 PLUMBING LEGEND, NOTES, AND DRAWING INDEX
P1.1 PLUMBING SITE PLAN
P2.1D PLUMBING DEMOLITION ENLARGED PLAN
P2.1 PLUMBING ENLARGED FLOOR PLAN

BUILDING DATA

NOT APPLICABLE

DEFERRED APPROVALS

1. FRAMED FABRIC STRUCTURE

PROJECT TEAM

OWNER:
CITY OF MILPITAS
455 EAST CALAVERAS BLVD.
MILPITAS, CA. 95035
PHONE: (408) 586-3314
FAX: (408) 586-3305
CONTACT: JULIE WALDRON, ASST. ENGINEER

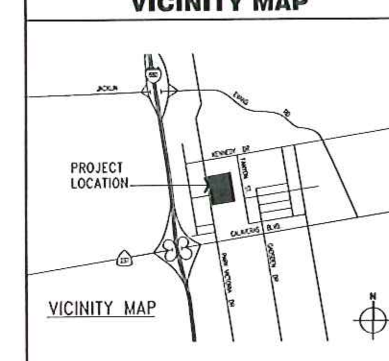
ARCHITECT:
IBI GROUP
160 W. SANTA CLARA STREET – SUITE 800
SAN JOSE, CA. 95113
PHONE: (408) 924-0811
FAX: (408) 924 0844
CONTACT: PATRICIA LOCK, AIA, PRINCIPAL

POOL CONSULTANT:
AQUATIC DESIGN GROUP
2226 FARADAY AVENUE
CARLSBAD, CA. 92008
PHONE: (512) 222-3220
FAX: (512) 271-6898
CONTACT: DENNIS BERKSHIRE

CIVIL ENGINEER:
HOHBACH-LEWIN STRUCTURAL ENGINEERS
260 SHERIDAN AVENUE, SUITE 150
PALO ALTO, CA 94306
PHONE: (650) 617-5930
FAX: (650) 617-5932
CONTACT: DAN LEWIN, S.E., PRINICPAL

PLUMBING:
ALFA TECH
1231 RIDDER PARK DRIVE, SUITE 50
SAN JOSE, CA. 95112
PHONE: (408) 436-1200
FAX: (408) 436-1511
CONTACT: REZA ZARE, PRINCIPAL

VICINITY MAP



IBI Group
160 West Santa Clara Street - Suite 800
San Jose, California 95113
ph: 408.924.0811 fax: 408.924.0844
www.ibigroup.com

LICENSED ARCHITECT – STATE OF CALIFORNIA – 09/15

RECORD DRAWINGS	
Project Engineer: ______	Date: ______
Designer: ______	Date: ______
Public Works Inspector: ______	Date: ______
Public Improvements Initially Accepted by the City Council on: ______	

Drawn By: Andrew Seymour
Checked By: Patricia Lock, AIA
Designed By: Patricia Lock, AIA Date: 04/28/15

Revisions			
Item	Description	Engr. Aprv.	Date
△			
△			
△			
△			
△			

CITY OF MILPITAS
ENGINEERING DIVISION
Milpitas Sports Center
Pool Repairs Project
PROJECT NO. 3408; EP NO. 2-11.91
Title Sheet

PROJECT NO. 3408
DRAWING NO. A0.01
SCALE AS NOTED
SHEET NO. SHEET __ of __

RECOMMENDED FOR BIDDING BY: ______ DATE: ______
Steve Erickson, CIP Manager

APPROVED FOR BIDDING BY: ______ DATE: ______
Steve Machida, Director of Engineering / City Engineer

*28B

City of Milpitas
Milpitas Sports Center Pool Repair
Project No. 3408
Staff Recommended
Pre-qualified Bidder List
June 16, 2015

The City of Milpitas has determined that the following contractors have met the pre-qualification requirements to bid as a general on the project:

1. Condor Inc.	3000 Durfee Ave El Monte, CA 91732	Earl Weiss
2. California Commercial Pools Inc.	2255 Auto Centre Dr. Glendora, CA 91740	Jason Jackson
3. Water Works Industries Inc.	930 Shiloh Rd. Bldg 38 Ste D Windsor, CA 95492	Mathais Toupin
4. Tricon Construction, Inc	11419 Sunrise Gold Circle, Ste 6 Rancho Cordova, CA 95742	Thomas Reid

MEMORANDUM OF UNDERSTANDING
SILICON VALLEY REGIONAL COMMUNICATIONS SYSTEM

BETWEEN THE SILICON VALLEY REGIONAL INTEROPERABILITY AUTHORITY AND THE CITY OF MILPITAS

This Memorandum of Understanding ("MOU") is made and entered into this ___ day of _____, 2015, by and between the Silicon Valley Regional Interoperability Authority, a California Joint Powers Authority ("SVRIA"), and the City of Milpitas, a municipal corporation of the State of California ("AGENCY") (together "Parties").

RECITALS

WHEREAS, in 2001, the Cities of Campbell, Cupertino, Gilroy, Los Altos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, Santa Clara, San Jose, Saratoga, and Sunnyvale; the Towns of Los Gatos and Los Altos Hills; the South Santa Clara County Fire District; the County of Santa Clara; San Jose State University; and the Santa Clara Valley Water District executed a Joint Funding Agreement ("Joint Funding Agreement") pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5 of the California Government Code, Government Code Section 6500 *et seq.*, to jointly hire consultants to complete the conceptual design and implementation strategy for a regional interoperable communications network, to jointly purchase a radio and data communications system, to integrate this system or network with other nearby regional public safety communications systems, to participate in regional interoperability systems, to jointly fund activities and systems related to interoperability and to jointly apply for grants and funding to facilitate accomplishing these goals;

WHEREAS, in 2010, the Cities of Campbell, Cupertino, Gilroy, Los Altos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, Santa Clara, San Jose, Saratoga, and Sunnyvale; the Town of Los Gatos and the County of Santa Clara (collectively "MEMBERS") entered into a joint powers agreement ("JPA Agreement") to form the Silicon Valley Regional Interoperability Authority ("SVRIA"), with similar goals and purpose as commenced under the Joint Funding Agreement;

WHEREAS, paying entities, which are not MEMBERS of SVRIA ("PARTICPANTS") will execute this MOU;

WHEREAS, SVRIA continues to plan and develop a regional communications interoperability system that will require the financial commitment of SVRIA MEMBERS and PARTICIPANTS by and through this MOU to fund the construction, operation and maintenance of such system;

WHEREAS, grant and local funds have been provided to SVRIA directly or through MEMBERS to improve interoperability through the multi-stage build out of a three cell, multi-site P25 Phase 2 TDMA 700 MHz Trunked Radio Simulcast Communications System, to be known as the Silicon Valley Regional Communications System ("SVRCS");

WHEREAS, the County of Santa Clara (“County”) is the Fiscal Agent and the Contract Manager for SVRIA and the SVRCS build-out (“System”);

WHEREAS, in order to facilitate the construction of the SVRCS, the Parties wish to affirm their continued financial support for a regional interoperable communication system as agreed in this MOU;

WHEREAS, AGENCY and SVRIA enter into this MOU under which the SVRIA will own and operate the System for the benefit of AGENCY and other MEMBERS and PARTICIPANTS, which other MEMBERS and PARTICIPANTS will execute Memoranda of Understanding similar to this one (collectively, the "MOU’s"). MEMBERS and PARTICIPANTS will pay, a portion of the cost of the System, consisting of a buy-in cost based on the number of radios committed for use on the System (the "Construction and Implementation Payments"), and the cost of annual operation (the "Operation and Maintenance Payments"), (all Payments are referred to herein collectively as the "AGENCY Payments");

WHEREAS, this MOU is intended to establish a means of requiring the MEMBERS’ Payments and PARTICIPANTS’ payments ensuring the sound operation and financing of the System, and is not in itself an approval of the System or the grant of any land use entitlement potentially required to develop the System; and

WHEREAS, it is anticipated that users of the SVRCS will include entities that enter into a memorandum of understanding similar to this MOU, after the SVRCS is fully functional. (“FUTURE PARTICIPANTS”).

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows.

SECTION 1. DEFINITIONS

AGENCY: The AGENCY entering into this MOU.

Construction: The complete planning, design, construction, acquisition, financing, improvement, repair, modification and installation of the SVRCS .

Construction and Implementation Payments: Payments made under this MOU for the purpose of building the SVRCS.

County: The County of Santa Clara.

FUTURE PARTICIPANTS 1: Entities who enter into a MOU and make their payment after June 30, 2016, but on or before July 1, 2017.

FUTURE PARTICIPANTS 2: Entities who enter into this MOU after July 1, 2017.

Joint Funding Agreement: Joint Funding Agreement is the agreement entered into by the predecessors to SVRIA in 2001 for the purposes of funding and implementing interoperability countywide.

JPA Agreement: The original agreement entered into by Members of the SVRIA in order to form the JPA.

Operations and Maintenance Payments: Payments made based upon this MOU for the ongoing operations and maintenance of the SVRCS.

MEMBERS: The members of the SVRIA under the Joint Powers Agreement.

MOU: This Memorandum of Understanding.

PARTICIPANTS: Parties to a memorandum of understanding similar to this MOU that are not members of SVRIA and enter into a MOU on or before June 30, 2016.

SVRCS or System: The three cell, multi-site System P25 Phase 2 TDMA 700 MHz Trunked Radio Simulcast Communications System, to be known as the Silicon Valley Regional Communications System. This includes the entire build out interoperable communications system envisioned by SVRIA.

SVRIA: The Silicon Valley Regional Interoperability Authority, formed in 2010 for the purposes of funding and implementing interoperability countywide and as a successor entity to the entity created under the Joint Funding Agreement.

Termination Date: December 31, 2029, unless earlier terminated by the Parties.

User Count: Radio Subscriber count as provided by the Members or Participants as of April 13, 2015 and reflected in Exhibit "A".

SECTION 2. PURPOSES OF THE MOU

The purposes of this MOU are to:

2.1 Require payment by the AGENCY for its share of the regional SVRCS costs; and

2.2 Set forth the MEMBERS, PARTICIPANTS and the SVRIA's responsibilities for completion of the SVRCS build out.

2.3 Set forth SVRIA's obligations to maintain and operate the SVRCS.

SECTION 3. OPERATION OF THE SYSTEM

3.1 SVRIA has entered or will enter into purchase orders and contracts to supervise and

provide for, or cause to be supervised and provided for, the complete planning, design, construction, acquisition, financing, improvement, repair, modification and installation of the SVRCS (collectively, "Construction"). SVRIA will cause the Construction to be diligently performed in accordance with the specifications approved by the SVRIA.

3.2 SVRIA shall operate the System in conjunction with the MEMBERS for the duration of this MOU.

3.3 AGENCY shall have the right to use the System during the term of the MOU, unless AGENCY is in default on AGENCY Payments required hereunder after the applicable cure period set forth in Section 20.

3.4 The SVRCS shall only be used for public safety communications and other governmental uses for the MEMBERS' and PARTICIPANTS' benefit and convenience. SVRIA agrees to maintain and preserve the System in good repair and working order at all times, to operate the System in an efficient and economical manner, and to pay all the System's maintenance and operation costs as they become due. AGENCY acknowledges that SVRIA has complete ownership and the sole discretion to operate, control and manage the System. Nothing in this MOU shall be construed to limit SVRIA's discretion in the System's operation, control and management.

3.5 SVRIA agrees to use commercially reasonable efforts to hire the County of Santa Clara, City of San Jose and/or other contractors to operate and maintain the System**.**

3.6 AGENCY agrees to purchase the components it uses with the SVRCS service from or with the cooperation of SVRIA. AGENCY shall not use any components with the SVRCS service which SVRIA has not authorized for its use. AGENCY shall not use the SVRCS in any manner which may adversely affect the service provided by the System.

3.7 SVRIA shall attempt to obtain the land use permits, if any, that are required for Construction. In the event a particular permit cannot be reasonably obtained for a particular site, SVRIA will seek one or more reasonable alternate sites.

SECTION 4. MODIFICATION OF SYSTEM

SVRIA shall have the right to make additions, modifications and improvements to the System or any portion thereof. All additions, modifications and improvements to the System shall thereafter comprise part of the System and become subject to the MOU's provisions. Such additions, modifications and improvements shall not in any way damage the System, or cause the System to be used for purposes other than those authorized under the MOU's provisions, state and federal law. The System, upon completion of any additions, modifications and improvements made thereto pursuant to this Section, shall be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

SECTION 5. PAYMENT OF THE INITIAL PAYMENT AND AGENCY PAYMENTS

5.1 AGENCY shall make Construction and Implementation Payments on the dates in Section 22.1 and in the amounts shown in Exhibit "A". AGENCY shall make annual Operations and Maintenance Payments on the dates and in the amounts as calculated by the formula listed in Exhibit "B" or the amounts listed in Exhibit "B

5.2 AGENCY provided User Counts are contained in Exhibit "A". Agencies may increase its User Count after entering into this MOU by the payment of user charge based upon the following formula: Total User Count as shown on Exhibit "A" divided by the total Infrastructure Cost = New User Count Charge. Effective January 1, 2016 and each year thereafter the New User Count Charge shall be increased by an amount equivalent to the then-current User Count Charge multiplied by the percentage increase in the Consumer Price Index – Consolidated Metropolitan Statistical Area (CPI) covering San Francisco - Oakland - San Jose, as published by the Bureau of Labor Statistics, U.S. Department of Labor, between the most recent October and the preceding October. The increase in New User Charge shall be compounded. Agency Operations and Maintenance Costs shall be increased commensurate with the increase in User Counts. Should the Agency User Count decrease in any year Operations and Maintenance Payments will not be reduced except as described in Section 24.

SECTION 6. PARTICIPANTS AND FUTURE PARTICPANTS

6.1 PARTICIPANTS as listed in Exhibit "A" shall pay their pro rata share of the System costs in a timely fashion at the same time MEMBERS make their Payments on or before September 30, 2015. PARTICIPANTS, not listed in Exhibit "A" and join on or before June 30, 2016 shall pay their pro rata share at the time of execution.

6.2 FUTURE PARTICIPANTS 1 who enter into a MOU after June 30, 2016, but on or before July 1, 2017 shall make a special Construction and Implementation Payment to cover previously expended costs by MEMBERS and PARTICIPANTS as well as periodic payments at the times required of other MEMBERS and PARTICIPANTS during the term of this MOU. These special Construction and Implementation payments shall be utilized in part to recalculate payments for Construction and Implementation payments for all MEMBERS, PARTICIPANTS and FUTURE PARTICIPANTS 1 and for additional capacity or system enhancements or held in reserve for the same purpose.

6.3 FUTURE PARTICIPANTS 2 who enter into a MOU after July 1, 2017 shall make a special Construction and Implementation Payment as well as periodic payments at the times required of other MEMBERS and PARTICIPANTS and FUTURE PARTICIPANTS 1 during the term of this MOU. These special Construction and Implementation payments shall be utilized in part to recalculate Operations and Maintenance payments for all MEMBERS, PARTICIPANTS and FUTURE PARTICPANTS 1 and FUTURE PARTICIPANTS 2 and for additional capacity or system enhancements or held in reserve for the same purpose.

SECTION 7. SOURCE OF PAYMENTS: BUDGET AND APPROPRIATION

7.1 AGENCY shall make the AGENCY Payments from any source of legally available AGENCY funds. AGENCY agrees to include all AGENCY Payments in each proposed annual AGENCY budget during the term of this MOU. AGENCY shall make the necessary annual appropriations for Construction and Implementation payments in FY 2015 – 2016, 2016 – 2017 and 2017 – 2018. AGENCY Payments may be made at any time prior to the deadline for such Payment; there are no prepayment penalties under this MOU.

7.2 Notwithstanding paragraph 7.1, in accordance with Article XVI, Section 18 of the California Constitution, if in any fiscal year subsequent to the execution of this MOU the AGENCY fails to appropriate money for the purpose of funding this MOU, this MOU shall terminate, without penalty effective upon the close of business on the last day of the fiscal year for which funding has been appropriated.

SECTION 8. OPERATION AND MAINTENANCE PAYMENTS

In addition the Payments required in this MOU, AGENCY shall continue to make MEMBER Assessment payments as required under the JPA Agreement through the end of fiscal year 2017 – 2018.At the start of fiscal year 2018 – 2019, AGENCY shall begin to make Operation and Maintenance Payments as listed in Exhibit “B”, in lieu of Member Assessments so long as the SVRCS is operating.

SECTION 9. ROLE OF GRANT FUNDING

In the event that grant funding can be utilized to reduce the overall System costs, the cost reduction will be apportioned to the SVRCS on behalf of all MEMBERS and PARTICIPANTS in a pro rata fashion for the benefit of the System.

SECTION 10. CONSTRUCTION BUDGET CONTINGENCY

SVRIA has established a 20% construction budget contingency within the System budget. SVRIA shall use these funds for the SVRCS, if unexpected construction costs or increased costs occur. If at the conclusion of System Construction, contingency funds remain, such funds shall be transferred to SVRIA for use as a reserve for Operations and Maintenance costs.

SECTION 11. RECEIPT AND DEPOSIT OF AGENCY PAYMENTS

SVRIA agrees that it will deposit the AGENCY Payments with the SVRIA’s fiscal agent, the County, for the benefit of the SVRCS.

SECTION 12. COMPLIANCE WITH MOU

Time is of the essence with respect to the AGENCY Payments and the performance of SVRIA under this MOU. AGENCY shall observe and perform all the agreements,

conditions, covenants and terms contained herein. SVRIA shall observe and perform all the agreements, conditions, covenants and terms contained herein. It is expressly understood and agreed by the Parties that each of the agreements, conditions, covenants and terms contained herein is an essential and material term of the MOU and the operation of the System by SVRIA.

SECTION 13. ACCESS TO SYSTEM

Upon reasonable notice to SVRIA, AGENCY or its authorized representative shall have the right at all reasonable times to enter, examine and inspect the System or any part thereof. AGENCY, any Authorized Representative of AGENCY and AGENCY's successors or assigns shall further have such rights of access to the System or any component thereof as may be reasonably necessary to cause the proper maintenance of the System in the event of failure by the SVRIA to perform its obligations hereunder; provided, however, that neither AGENCY nor any of their assigns shall have any obligation to cause such proper maintenance.

SECTION 14. INSURANCE

14.1 SVRIA shall procure and maintain, or cause to be procured and maintained, throughout the term of this MOU, casualty insurance against loss or damage to the System. This insurance shall, as nearly as practicable, cover loss or damage that is normally covered by such insurance with extended coverage. This insurance shall not be required to cover loss or damage caused by seismic activity. This insurance shall be subject to deductibles as are customarily maintained by public agencies with respect to works and properties of a like character. The insurance may be maintained as part of or in conjunction with any other insurance coverage carried by SVRIA, and may be maintained in whole or in part in the form of the participation by SVRIA in a joint powers authority or other program providing pooled insurance. MEMBERS, PARTICIPANTS, FUTURE PARTICIPANTS 1 and FUTURE PARTICIPANTS 2 as each approves the MOU and makes their payment shall be named as additional insured on SVRIA's liability coverage insurance.

14.2 SVRIA shall maintain or cause to be maintained throughout the MOU's term, a standard comprehensive general insurance policy or policies whose minimums are at least one million ($1,000,000) dollars per occurrence to protect SVRIA, AGENCY, and their respective members, officers, agents, employees, designated volunteers and assigns. The policy or policies shall provide for indemnification of said Parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of operating the System as required by the JPA Agreement. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as SVRIA shall deem adequate and prudent. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by SVRIA. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth in this Agreement shall be deemed to be the minimum amount of insurance required under this Agreement and shall be available to the Parties.

14.3 Insurance required to be maintained by subparagraphs 14.1 or 14.2 above, may be obtained under a self-insurance program. SVRIA's coverage shall be primary insurance with respect to the Agency; and Agency's insurance shall be excess of SVRIA's insurance and shall not contribute with it.

14.4 INSURANCE: AGENCY shall, at its own expense maintain in effect, a program of self-insurance and/or insurance of general liability coverage, including automobile liability, in the amount of at least one million ($1,000,000) dollars per occurrence and in the aggregate as well as statutory California Workers' Compensation coverage. The coverage shall remain in effect during the entire term of this MOU. AGENCY shall provide evidence upon the request of SVRIA that the required insurance coverage is in effect.

14.5 SVRIA shall require that errors and omissions insurance in the amount of at least one million ($1,000,000) dollars per claim for any architects or engineers retained for the design and construction of the system.

SECTION 15. BOOKS AND ACCOUNTS

15.1 SVRIA will keep complete and accurate financial records for the System. SVRIA shall keep such records separate from all other SVRIA financial records. Upon reasonable notice to SVRIA, AGENCY may inspect the SVRIA's System financial records.

15.2 Not more than two hundred and ten (210) days after the close of each fiscal year, SVRIA will prepare:

15.2.1 System financial statements in accordance with Generally Accepted Accounting Principles.

15.2.2 An Accountant's Report based thereon, prepared by an Independent Certified Public Accountant who examined such financial statements.

15.2.3 A summary statement of the System's financial condition. SVRIA shall furnish a copy of the summary statement to AGENCY.

15.3 Not more than two hundred and ten (210) days after the completion of all work associated with SVRCS Construction, the SVRIA shall prepare and submit a final report to AGENCY disclosing SVRIA's disbursements of the funds provided by all MEMBERS, PARTICIPANTS and FUTURE PARTICIPANTS.

SECTION 16. PAYMENT OF TAXES AND COMPLIANCE WITH GOVERNMENTAL REGULATIONS

SVRIA will pay and discharge all taxes, assessments and other governmental charges, if any, which may hereafter be lawfully imposed upon the System when due. SVRIA will conform to the valid requirements of any governmental agency with authority relative to the Construction or the System. Without limiting the foregoing, SVRIA shall comply with

all applicable laws and written policies and regulations of the federal, state and local governments in the construction and operation of the SVRCS and the performance of SVRIA under this MOU.

SECTION 17. FURTHER ASSURANCES

SVRIA and AGENCY will each adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the Parties' performance of this MOU.

SECTION 18. SVRIA REPRESENTATIONS AND WARRANTIES

SVRIA represents and warrants to AGENCY as follows:

18.1 Due Organization and Existence. SVRIA is a joint exercise of powers authority duly organized and validly existing under the JPA Agreement and the laws of the State of California. SVRIA has the full legal right, power and authority under the laws of the State of California to enter into this MOU and to carry out all of its obligations herein.

18.2 Due Execution. SVRIA's representatives, who sign this MOU, are authorized to sign pursuant to a resolution adopted by the SVRIA's Board of Directors.

18.3 Valid, Binding and Enforceable Obligations. This MOU has been authorized and executed by SVRIA and constitutes the legal, valid and binding agreement of SVRIA, enforceable against SVRIA in accordance with its terms.

SECTION 19. AGENCY REPRESENTATIONS AND WARRANTIES

AGENCY represents covenants and warrants to SVRIA as follows:

19.1 Due Organization and Existence. AGENCY is a public body, corporate and politic, duly organized and validly existing under the laws of the State of California. It has full legal right, power and authority to enter into this MOU and to carry out all of its obligations herein.

19.2 Due Execution. AGENCY's representatives, who sign this MOU, are authorized to sign pursuant to an official action taken by AGENCY's governing body.

19.3 Valid, Binding and Enforceable Obligation. This MOU has been authorized and executed by AGENCY and constitutes the legal, valid and binding agreement of AGENCY, enforceable against AGENCY in accordance with its terms.

SECTION 20. EVENTS OF DEFAULT

The following events are Events of Default hereunder:

20.1 Failure by AGENCY to abide by or perform any of its obligations in this MOU within the thirty (30) day period from the date of AGENCY's receipt of SVRIA's written notice

specifying such failure and requesting that it be remedied. Such failure shall not constitute an Event of Default if AGENCY diligently and in good faith, commences to cure the failure within such thirty (30) day period and thereafter completes the cure of such failure within a reasonable period of time. If AGENCY does not complete the cure of the Event of Default in a reasonable time or fails to diligently attempt such cure, SVRIA may terminate this MOU.

20.2 Failure by SVRIA to abide by or perform any of its obligations in this MOU within the thirty (30) day period from the date of SVRIA's receipt of AGENCY's written notice specifying such failure and requesting that it be remedied. Such failure shall not constitute an Event of Default if SVRIA diligently and in good faith, commences to cure the failure within such thirty (30) day period and thereafter completes the cure of such failure within a reasonable period of time. If SVRIA does not complete the cure of the Event of Default in a reasonable time or fails to diligently attempt such cure, AGENCY may terminate this MOU.

20.3 AGENCY files a petition seeking arrangement or reorganization under federal bankruptcy laws or similar state law, or if a court of competent jurisdiction shall approve a petition filed against AGENCY seeking arrangement or reorganization under the federal bankruptcy laws or similar state law, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of such AGENCY or of the whole or a substantial part of its property. Notwithstanding the foregoing, such filing shall not constitute an Event of Default if AGENCY continues to pay its AGENCY Payments on time.

20.4 SVRIA files a petition seeking arrangement or reorganization under federal bankruptcy laws or similar state law, or if a court of competent jurisdiction shall approve a petition filed against SVRIA seeking arrangement or reorganization under the federal bankruptcy laws or similar state law, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of SVRIA.

SECTION 21. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved in this MOU is exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise, and all such remedies may be exercised without exhausting and without regard to any other remedy.

SECTION 22. AGENCY'S OBLIGATIONS

22.1 AGENCY's Payment. AGENCY shall pay to the SVRIA money in the amount stated on the SVRIA invoice in an approximate amount as specified in Exhibit "A" to the SVRIA to fully offset the AGENCY's portion of the regional SVRCS cost. Payments shall commence in fiscal year 2015 – 2016 unless otherwise designated in Exhibit "A". These payments shall be made by September 30, 2015 and by each succeeding September 30 and shall

last for a minimum of three fiscal years as delineated in Exhibit A. Operation and Maintenance Payments, as shown in Exhibit “B”, shall commence on September 30, 2018 and continue throughout the term of the MOU. AGENCY shall make these payments on or before September 30 of each successive fiscal year. Operations and Maintenance costs for future years may increase, but such increase will be limited to actual costs and reserve requirements.

22.2 AGENCY’s Role in SVRCS. During the Construction and Operation of the SVRCS:

22.2.1 AGENCY shall provide technical support including testing during the System Construction and delivery.

22.2.2 AGENCY shall participate in System meetings with SVRIA and its contractor(s).

22.2.3. AGENCY shall coordinate with SVRIA for the System upgrade and maintenance work at all AGENCY facilities.

22.2.4 AGENCY shall assist SVRIA with the final acceptance of the SVRCS by testing System performance, evaluating workmanship and verifying installed equipment inventories.

22.2.5 AGENCY's costs to administer and participate in usage of the SVRCS will not be reimbursed through the SVRCS grant funds, the JPA Agreement or by SVRIA.

SECTION 23. SVRIA'S OBLIGATIONS

In consideration of AGENCY’s Payment, SVRIA shall fulfill the obligations listed below:

23.1 Tasks. SVRIA shall perform and be responsible for the following tasks for completing the SVRCS , including, but not limited to:

23.2.1 Serve as System Manager for the SVRCS, or retain a qualified contractor(s) to serve as System Manager for the SVRCS,

23.2.2 Fulfill CEQA requirements, if any.

23.2.3 Implement Construction in accordance with UASI and SHSGP Grant guidelines.

SECTION 24. TERM OF MOU

24.1 This MOU commences upon the full execution of the MOU ("Effective Date") and shall expire on December 31, 2029. The MOU shall be automatically extended for two (2) additional three-year periods. One year prior to each expiration date, SVRIA shall inform each Member or Participant of the approaching automatic extension of the term of the MOU. Any Member or Participant may notify the SVRIA in writing within one

hundred and eighty (180) days of such notice, that it does not agree to the extension of the term of the MOU. The Operations and Maintenance payments for the remaining MEMBERS or PARTICIPANTS shall be adjusted based upon actual User Count as of June 30 of the year in which the MOU terminates starting in, 2029, and at the expiration of the first three year extension period. All financial commitments of AGENCY for Payments while AGENCY is a MEMBER and/or while this MOU applies to AGENCY shall extend past the termination date unless the commitments have been satisfied prior to that date.

24.2 This MOU shall not commence unless and until the City of San Jose and the County of Santa Clara have approved this MOU and budgeted funding for the first year of the MOU. If any Member or Participant terminates this MOU then the SVRIA shall meet and confer in good faith concerning the continued operation of SVRCS and possible amendment to this Agreement.

SECTION 25. OWNERSHIP, MAINTENANCE, INSURANCE AND MANAGEMENT

County, as Fiscal Agent for the UASI and SHSGP Grants, shall own, maintain, insure, and manage all infrastructure equipment and upgrades installed as part of the SVRCS upon the System's final acceptance by the County, until such time as SVRIA assumes ownership, maintenance, insurance, and management responsibilities. If the SVRIA purchases dispatch consoles, subscriber radios and other related equipment and/or accessories on AGENCY's behalf, such equipment shall be transferred from the SVRIA to AGENCY following SVRIA's receipt of AGENCY's full reimbursement of costs.

SECTION 26. RELATIONSHIP OF THE PARTIES

Each Party shall perform the work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the other Party. None of the MOU's provisions are intended to create, nor shall be deemed or construed to create, any relationship between the Parties other than that of independent parties contracting with each other for purpose of effecting the MOU's provisions. The Parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither Party has the authority to make any statements, representations or commitments of any kind on behalf of the other Party, or to use the name of the other Party in any publications or advertisements, except with the written consent of the other Party.

SECTION 27. MODIFICATION

The Parties may modify this MOU only through a written document, signed by both Parties.

SECTION 28. SEVERABILITY

The MOU's provisions are severable, and if for any reason, a Court with proper jurisdiction determines a clause, sentence, or paragraph of this MOU to be invalid such invalidity shall

not affect other provisions of this MOU, which shall be given effect without the invalid provision.

SECTION 29. TERMINATION

29.1 This MOU may be terminated upon six months written notice to SVRIA. Should AGENCY terminate this Agreement AGENCY shall have no interest or claim in the assets of the SVRIA absent an SVRIA approved written agreement which contains express provisions to the contrary. The terminating AGENCY shall be obligated to pay a pro rata share of its payments up to the date of termination.

29.2 If the Agreement is terminated pursuant to Section 29.1 or Section 7.2 then SVRIA may remove any SVRCS equipment and relocate the equipment to support the balance of the system. Should the equipment need to be removed or relocated after termination the costs of relocation or removal shall be borne by the terminating party.

29.3 Nothing contained in this MOU or the JPA Agreement requires that AGENCY remain as a MEMBER, however the JPA Agreement does contain terms for withdrawal from the JPA.

SECTION 30. SURVIVAL

30.1 After the MOU's termination or expiration, those provisions which by their nature or context are intended to survive beyond termination or expiration, and all provisions regarding indemnification and limitations of liability, will survive indefinitely or until the expiration of the time period specified elsewhere in this MOU with respect to the provision in question.

30.2 Upon the MOU's termination or expiration, as between the Parties, the SVRIA retains all right, title and interest in and to the SVRCS.

SECTION 31. ASSIGNMENT

This MOU shall be binding upon and shall inure to the benefit of the successors of the Parties. With the exception of asset transfer to SVRIA, and if applicable, AGENCY as detailed herein, no Party may assign any rights or obligations hereunder without the written consent of the other Party, except as provided herein.

SECTION 32. NO WAIVER

No waiver by either Party of any breach or default of any of the covenants or agreements herein shall be deemed to be a waiver as to any subsequent and/or similar breach or default.

SECTION 33. INDEMNIFICATION

33.1 SVRIA agrees to indemnify, defend and hold harmless the AGENCY, its officers, agents and employees to the fullest extent allowed by law from any and all claims, actions, causes of action, losses, damages, liabilities and costs of every nature, including all claims, actions, causes of action, losses, damages, liabilities for property damage, bodily injury, or death, and all costs of defending any claim, action or cause of action, caused by, arising out of, or resulting from, or alleged to have been caused by, arise out of, or result from, in whole or in part, SVRIA's performance under this Agreement, except for any claims, actions, causes of action, losses, damages, costs or liabilities proximately caused by the sole negligence or willful misconduct of AGENCY.

33.2 The foregoing indemnity provision is intended to fully allocate the parties' risk of liability to third-parties; and there shall be no rights to indemnity or contribution, in law or equity or otherwise between the parties that are not set forth in this section. SVRIA waives all rights to subrogation for any matters covered by this provision. SVRIA's responsibility for such defense and indemnity obligations as set forth in this provision shall survive the termination or completion of this MOU for the full period of time allowed by law.

SECTION 34. FORCE MAJEURE

"Force Majeure Event" means any circumstances or occurrence which is beyond the reasonable control of a Party including, but not limited to, acts of God, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, strike, lock-out or other form of industrial action (other than those relating solely to any Party's own workforce). If a Force Majeure Event affects either Party, that Party shall promptly notify the other Party of the nature and extent of the Event. No Party shall be liable for any loss or damage suffered or incurred by the other Party arising from the first Party's delay in performing or failure to perform its obligations under the MOU to the extent that and for so long as the delay or failure results from any Force Majeure Event, provided the same arises without the fault or negligence of the first Party. Each Party shall use its commercially reasonable efforts to minimize the effects of any Force Majeure Event on the operation of this MOU and the System.

SECTION 35. SUCCESSOR IS DEEMED INCLUDED IN ALL REFERENCES TO PREDECESSOR

Whenever SVRIA or AGENCY is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in SVRIA or AGENCY, and all agreements and covenants required hereby to be performed by or on behalf of SVRIA or AGENCY shall bind and inure to the benefit of the respective successors thereof whether so expressed or not; provided; however, that SVRIA shall not provide service from the System to any successor to AGENCY until such successor accepts in writing, AGENCY's obligations.

SECTION 36. WAIVER OF PERSONAL LIABILITY

No board member, officer, attorney or employee of AGENCY or SVRIA shall be individually or personally liable under the MOU.

SECTION 37. NOTICES

37.1 All deliveries, notices, requests, demands, or other communications provided for or required by this MOU shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested or when sent by overnight carrier;.

Notices shall be addressed to:

SVRIA:

Heather Tannehill-Plamondon
Executive Director, SVRIA
601 El Camino Real
Santa Clara, CA 95050

Telephone: 408-615-5571
Email:hplamondon@svria.org

AGENCY:
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035
Attn: City Manager

Telephone: 408-586-3050
Email: twilliams@ci.milpitas.ca.gov

37.2 A Party may change its Notice contact or Notice address by written Notice to the other Party. Such change becomes effective no sooner than ten (10) days after the date of such Notice.

SECTION 38. TITLES AND HEADINGS

The titles, numbers and headings of paragraphs, sections, subsections, and exhibits are for convenience only and are not intended to affect the MOU's construction or interpretation.

SECTION 39. ENTIRE AGREEMENT

This MOU and attached exhibits incorporate all the agreements, covenants, and

understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants, and understandings have been merged into this MOU. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this MOU.

SECTION 40. COUNTERPARTS

This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

SECTION 41. GOVERNING LAW

California law governs the MOU's performance and interpretation.

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SECTION 42. VENUE

If a Party to this MOU brings a lawsuit connected to the System, the Parties agree that venue shall be exclusively vested in the State Courts of the County of Santa Clara.

IN WITNESS OF, the Parties have executed the MOU through their duly authorized representatives as of the last date set forth below.

Signed:

SVRIA

By: _____
Chair of Board of Directors

Date: _____, 2015

Attest:

By: _____

Date: _____, 2015

Approved as to Form and Legality:

By: _____
Gary M. Baum
General Counsel, SVRIA
Date: _____, 2015

AGENCY

By: _____
Name, or Designee

Date: _____, 2015

Approved as to Form and Legality:

By: _____
Name, or Designee

(title)_____

Date: _____, 2015

MOU SVRIA SVRCS clean version Milpitas (26) 4-14-15

Exhibit A

Cost per agency Breakdown							
	User Count		FY14/15	FY15/16	FY16/17	FY17/18	Infrastructure Cost
San Jose	2,750	26.46%		$2,545,720	$ 2,545,720	$2,545,720	$ 7,637,159
Santa Clara County	2,130	20.49%		$1,971,776	$ 1,971,776	$1,971,776	$ 5,915,327
VTA	2,000	19.24%		$1,851,432	$ 1,851,432	$1,851,432	$ 5,554,297
Santa Clara	791	7.61%	$354,639	$ 614,029	$ 614,029	$ 614,029	$ 2,196,725
Palo Alto	690	6.64%		$ 638,744	$ 638,744	$ 638,744	$ 1,916,233
Sunnyvale	455	4.38%		$ 421,201	$ 421,201	$ 421,201	$ 1,263,603
Mountain View	310	2.98%		$ 286,972	$ 286,972	$ 286,972	$ 860,916
Gilroy	304	2.92%		$ 281,418	$ 281,418	$ 281,418	$ 844,253
Milpitas	249	2.40%		$ 230,503	$ 230,503	$ 230,503	$ 691,510
Campbell	189	1.82%		$ 174,960	$ 174,960	$ 174,960	$ 524,881
Los Gatos	140	1.35%		$ 129,600	$ 129,600	$ 129,600	$ 388,801
Morgan Hill	135	1.30%		$ 124,972	$ 124,972	$ 124,972	$ 374,915
Los Altos	90	0.87%		$ 83,314	$ 83,314	$ 83,314	$ 249,943
SJSU	86	0.83%		$ 79,612	$ 79,612	$ 79,612	$ 238,835
South County Fire	31	0.30%		$ 28,697	$ 28,697	$ 28,697	$ 86,092
Foothill/DeAnza	23	0.22%		$ 21,291	$ 21,291	$ 21,291	$ 63,874
West Valley/Mission	22	0.21%		$ 20,366	$ 20,366	$ 20,366	$ 61,097
	10,395	100.00%					**$ 28,868,460**
4/30/2015 FINAL	10,395		$354,639	$9,504,607	$ 9,504,607	$9,504,607	**$ 28,868,460**

Exhibit B

	User Count		Operations and Maitenance (FY18/19)	Operations and Maitenance (FY19/20)	Operations and Maitenance (FY20/21)	Operations and Maitenance (FY21/22)	Operations and Maitenance (FY22/23)	Operations and Maitenance (FY23/24)	Operations and Maitenance (FY24/25)	Operations and Maitenance (FY25/26)	Operations and Maitenance (FY26/27)	Operations and Maitenance (FY27/28)	Operations and Maitenance (FY28/29)
San Jose	2,750	26.46%	$1,001,627	$1,001,627	$ 990,977	$1,008,358	$1,026,516	$ 1,045,593	$1,065,552	$ 1,086,436	$ 1,108,335	$ 1,131,250	$ 1,152,476
Santa Clara County	2,130	20.49%	$775,806	$775,806	$ 767,557	$ 781,019	$ 795,083	$ 809,860	$ 825,318	$ 841,494	$ 858,456	$ 876,205	$ 892,645
VTA	2,000	19.24%	$728,456	$728,456	$ 720,711	$ 733,351	$ 746,557	$ 760,432	$ 774,947	$ 790,135	$ 806,062	$ 822,727	$ 838,164
Santa Clara	791	7.61%	$288,104	$288,104	$ 285,041	$ 290,040	$ 295,263	$ 300,751	$ 306,491	$ 312,499	$ 318,798	$ 325,389	$ 331,494
Palo Alto	690	6.64%	$251,317	$251,317	$ 248,645	$ 253,006	$ 257,562	$ 262,349	$ 267,357	$ 272,597	$ 278,091	$ 283,841	$ 289,167
Sunnyvale	455	4.38%	$165,724	$165,724	$ 163,962	$ 166,837	$ 169,842	$ 172,998	$ 176,300	$ 179,756	$ 183,379	$ 187,170	$ 190,682
Mountain View	310	2.98%	$112,911	$112,911	$ 111,710	$ 113,669	$ 115,716	$ 117,867	$ 120,117	$ 122,471	$ 124,940	$ 127,523	$ 129,915
Gilroy	304	2.92%	$110,725	$110,725	$ 109,548	$ 111,469	$ 113,477	$ 115,586	$ 117,792	$ 120,101	$ 122,521	$ 125,055	$ 127,401
Milpitas	249	2.40%	$90,693	$90,693	$ 89,728	$ 91,302	$ 92,946	$ 94,674	$ 96,481	$ 98,372	$ 100,355	$ 102,430	$ 104,351
Campbell	189	1.82%	$68,839	$68,839	$ 68,107	$ 69,302	$ 70,550	$ 71,861	$ 73,232	$ 74,668	$ 76,173	$ 77,748	$ 79,207
Los Gatos	140	1.35%	$50,992	$50,992	$ 50,450	$ 51,335	$ 52,259	$ 53,230	$ 54,246	$ 55,309	$ 56,424	$ 57,591	$ 58,671
Morgan Hill	135	1.30%	$49,171	$49,171	$ 48,648	$ 49,501	$ 50,393	$ 51,329	$ 52,309	$ 53,334	$ 54,409	$ 55,534	$ 56,576
Los Altos	90	0.87%	$32,781	$32,781	$ 32,432	$ 33,001	$ 33,595	$ 34,219	$ 34,873	$ 35,556	$ 36,273	$ 37,023	$ 37,717
San Jose State	86	0.83%	$31,324	$31,324	$ 30,991	$ 31,534	$ 32,102	$ 32,699	$ 33,323	$ 33,976	$ 34,661	$ 35,377	$ 36,041
South County Fire	31	0.30%	$11,291	$11,291	$ 11,171	$ 11,367	$ 11,572	$ 11,787	$ 12,012	$ 12,247	$ 12,494	$ 12,752	$ 12,992
Foothill/DeAnza	23	0.22%	$8,377	$8,377	$ 8,288	$ 8,434	$ 8,585	$ 8,745	$ 8,912	$ 9,087	$ 9,270	$ 9,461	$ 9,639
West Valley /Mission	22	0.21%	$8,013	$8,013	$ 7,928	$ 8,067	$ 8,212	$ 8,365	$ 8,524	$ 8,691	$ 8,867	$ 9,050	$ 9,220
	10,395	100.00%	$3,786,150	$3,786,150	$3,745,893	$3,811,593	$3,880,229	$ 3,952,343	$4,027,786	$ 4,106,729	$ 4,189,508	$ 4,276,125	$ 4,356,358
April 30, 2015	10,395		$3,786,150	$3,786,150	$3,745,893	$3,811,593	$3,880,229	$ 3,952,343	$4,027,786	$ 4,106,729	$ 4,189,508	$ 4,276,125	$ 4,356,358

MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Joint Meeting of Milpitas City Council and the Housing Authority Commission**
Date:	**Tuesday, June 16, 2015**
Time:	**5:30 Housing Authority, 6:00 PM Closed Session** **7:00 PM Regular Meeting**
Location:	**Council Chambers, Milpitas City Hall,** **455 East Calaveras Blvd., Milpitas**

CALL TO ORDER

Mayor Esteves called the meeting to order at 5:30 PM. The City Clerk noted the roll.

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

ABSENT: Councilmember Barbadillo was absent at roll call. He arrived in Closed Session.

HOUSING AUTHORITY

City Manager Tom Williams reviewed actions implementing the terms of the existing Development and Disposition Agreement for the South Main Senior Lifestyles development project. At this time, there were administrative actions to be made by the City Manager and he wanted to seek concurrence of the City Council/Housing Authority.

South Main Senior Lifestyles is a project that would contain 389 senior housing units at the 5.94 acre site on South Main Street, previously in the city's Redevelopment Agency area. 48 units would be allocated for low-income seniors.

Councilmembers asked various questions about the project, including on the low-income units to be built, offered for sale to seniors in Phase 1. It was the first section to be built with congregate care units and then later Phase II with the majority of residential units would be built.

Two items that were requested at this meeting were: an extension of time to complete the project and transfer of ownership from Mr. Callahan's firm to the Wolff companies. Integral Senior Living would be the operator for Phase 1 of South Main Senior Lifestyles project.

Mr. Joe Callahan addressed the Council, and introduced the new partner in the project, The Wolff Company. He introduced Mike Milpott from Wolff, who provided some company history and information on the financing of the project in two phases. Ms. Collette Valentine from ISL addressed the Council too, describing her company as the third largest operator of senior living facilities in California.

Vice Mayor Montano recommended a clear walking path with flashing beacons at this site and on streets nearby to allow seniors to safely cross near Great Mall Parkway at Main St. The City Manager responded to her regarding some of the scheduled improvements planned for the Transit Area Specific Plan area.

Councilmember Grilli offered compliments to Mr. Callahan for this proposed project, which she viewed as a welcome addition to the Milpitas community. He renewed his offer to City Council members to go on a tour of the Livermore site (his first-built similar senior housing).

City Manager Williams then noted that no formal action of the City Council was required while a vote of concurrence would be welcome.

<u>Motion</u>: to accept the report and presentation by staff and the developers of South Main Senior Lifestyles project, providing concurrence with the City Manager's administrative approval of the

transference of the Disposition and Development Agreement to a new corporate entity and permitting extension of time for completion, if needed

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Barbadillo)

CLOSED SESSION City Council convened to Closed Session at 6:00 PM to discuss three issues.

ANNOUNCEMENT No announcement was made out of Closed Session.

City Council convened in Open Session at 7:47 PM.

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

INVOCATION Mayor Esteves invited James Yu to offer the prayer for invocation.

MEETING MINUTES Motion: to approve the minutes of May 11 and June 2, 2015 City Council meetings

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

SCHEDULE OF MEETINGS Motion: to approve Council Calendars/Schedule of Meetings for June and July 2015, as amended

City Manager Tom Williams announced that the Sister Cities Commission would not meet in June or July, with its next meeting on August 27. The Planning Commission subcommittee would meet the following evening on Wednesday, July 17 at 5:30 PM.

Mayor Esteves announced that on June 18 and July 16, there would be no Congestion Management Group meeting. On July 2, the Santa Clara Valley Transportation Authority Board of Directors would not meet..

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

PRESENTATIONS Mayor Esteves presented a commendation to Agape Mobile Dental Bus at the Senior Center. Dentists and staff provide free dental service to seniors who need it at this facility.

The Mayor presented the Youth Advisory Commission's Scholarship Award to Charles "David" Olivar, a recent graduate of Milpitas High School who will attend UC Berkeley.

Mayor Esteves proclaimed July 2015 as *Parks & Recreation Month.* It was accepted by Dr. Van La, a long-time Milpitas resident, who volunteered with her family for many Recreation events and programs, including providing translation services.

Commendations were presented to Milpitas Police Department, accepted by Chief Pangelinan, to Library Staff Debra Serrano, and to Santa Clara Valley Transportation Authority Bus Driver Tim Watson for the recent safe return of a child abducted from the Milpitas Library.

PUBLIC FORUM Isaac Hughes, Milpitas resident, read from a report from San Jose Animal Services, about a dog bite incident in Milpitas, and made additional comments about that.

Robert Marini, Milpitas resident, asked if utility rates would be part of agenda item no. 3, and so he would return on that. He said some computers at the Senior Center did not work.

Voltaire Montemayor, Milpitas resident, said this City was great and mentioned great aspects of the City. He said to be ready for earthquakes and that he was a happy resident.

ANNOUNCEMENTS

Councilmember Giordano congratulated the City Manager and staff, school board and colleagues on Milpitas' recent rating as one of the best family friendly cities in America, according to the www.niche.com website.

Vice Mayor Montano mentioned the Youth Advisory Commission's latest event - a Math-a-thon which was a recent success with very bright kids competing. She announced that the American Cancer Society's Relay for Life fundraising event would be held on Saturday and Sunday at the Milpitas Sports Center.

Mayor Esteves announced a Buddhist event, with free medical services outreach program on Dempsey Road on Sunday, June 21 from 9 AM to 3 PM - open to all Milpitas residents.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

APPROVAL OF AGENDA

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

Councilmember Giordano asked to move item no. 5 (report from City Attorney Subcommittee) up to be heard after Unfinished Business, following the public hearing item.

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 by *asterisk), as amended

City Manager Tom Williams requested to remove Item No. 17 from consent (resolution on affordable housing policy).

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

* 4. Commissions

Approved the following appointments to Commissions as follows and recommended by Mayor Esteves:

Emergency Preparedness Commission: re-appointed Mike Berryhill, Evelyn Chua and Nasir Lalani as regular voting members to terms that will expire in June 2018. Re-appointed Jonathan Nakapalau as Alternate No. 1 and Christine Tran as Alternate No. 2 to terms that will expire in June 2017.

Library Advisory Commission: re-appointed Marie Pham as a regular voting member to a term that will expire in June 2017. Re-appointed Nonie McDonald as Alternate No. 2 to a term that will expire in June 2017.

Parks, Recreation and Cultural Resources Commission: re-appoint Steve Munzel and Rohit Sharma as regular voting members to terms that will expire in June 2018.

* 6. CAC Workplan

Accepted and approved the 2016 Community Advisory Commission Work Plan.

* 7. EPC Bylaws	Approved changes to the Emergency Preparedness Commission By- Laws as recommended by Commissioners.
*10. Donation Request	Approved a donation of $500 to the Alliance Renewal Kingdom Ministries for its SAM camp in the summer.
*11. Fee Waiver Request	Waived the fees of $1,480 for rental of the Community Center Auditorium as requested by South Bay Kids music group for its fundraiser on July 11, 2015.
*12. Ordinance No. 65.144	Waived the second reading and adopted Ordinance No. 65.144 regarding solar permit streamlining.
*13. Ordinance No. 208.51	Waived the second reading and adopted Ordinance No. 208.51 amending Section VIII.2-5.38 of the Milpitas Municipal Code.
*14. Resolution - Accept Project No. 3402	Adopted Resolution No. 8488 granting initial acceptance of the McCarthy Blvd. Lighting & Landscape Improvements, Projects No. 3402, subject to a one year warranty period, and reduction of the faithful performance bond to $35,284.52; and granting authorization to the Director of Engineering to issue the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further City Council action.
*15. Resolution – for Automated Water Meters	Adopted Resolution No. 8489 approving plans and specifications for Automated Water Meter (Phase 1), Project No. 7121; awarding a contract to Preston Pipelines and authorizing the City Manager to execute the contract for the Automated Water Meter (Phase 1), Project No. 7121, in the amount of $308,600.00; and authorizing the Director of Engineering to negotiate execute contract change orders for Automated Water Meter (Phase 1), in the cumulate amount not to exceed $46,000.
*16. Resolution – Unclaimed Checks	Adopted Resolution No. 8490 transferring a total of $3,487.34 in unclaimed checks and credits, per the list generated by the City's Finance Department to the General Fund and according to standard operating procedure.
*18. Senior Nutrition Program	Approved Amendment No. 5 to the Master Agreement with the County of Santa Clara for the Senior Nutrition Program extending the term to June 30, 2016.
*19. Excess Workers Comp.	Authorized the City Manager to pay Brown & Brown of California the premium rate of $132,691 and authorized Safety National Casualty Corporation to provide for the City's excess workers' compensation insurance for FY 2015-16.
*20. Purchase LED lights	Authorized the purchase of 1,750 LED retrofit street lights in the total amount of $206,625.00 from HD Supply Power Solutions.
*21. Recreation vendors	Approved nine separate agreements between the City of Milpitas and the nine vendors for classes and camps in their appropriate dollar amounts for Fiscal Year 2015-16.
*22. Recology South Bay	Approved a Non-Exclusive Collection, Transportation and Recycling of Non-Putrescible Debris Agreement with Recology South Bay.
*23. Soundwall Renovation	Rejected the apparent low bid from OnPoint Construction in the amount of $594,827, and authorized staff to repackage and re-advertise the project for bid proposals for the 2014 Soundwall Renovation, Project No. 4267.
*24. Agreements with RMC Water and Environment	1) Approved a consultant agreement with RMC Water & Environment for engineering services in the amount of $482,792 for CIP No. 7118. 2) Approved a consultant agreement with RMC Water & Environment for engineering services in the amount of $26,559 for CIP No. 7126 (per budget appropriation approval in the public hearing matter on this agenda regarding water conservation).

3) Approved Amendment No.2 to the consultant services agreement with RMC Water and Environment for Utility Engineering support in the amount of $42,000.
4) Approved budget appropriation of $482,792 from the Water Fund to CIP No. 7118.

*25. Water Solutions Inc.

1) Approved a consultant agreement with Water Solutions, Inc. for engineering services in the amount of $427,000.
2) Approved a new Capital Improvement Project, Supervisory Control and Data Acquisition (SCADA), Project No. 7127.
3) Approved budget appropriation in the amount of $50,000 from the Water Fund to Project No. 7127.

*26. HydroScience

Approved a consultant agreement with HydroScience Engineers, Inc. for engineering services in the amount of $51,000 for CIP No.7126.

*27. Biggs Cardosa Assoc.

Approved Amendment No. 1 to the agreement with Biggs Cardosa Associates, Inc. in the amount of $6,900.00 and extend the term to June 17, 2016 for the Midtown Parking Garage Fire Door Conversion, Project No. 3407.

*28. Milpitas Sports Center Pool Repair Project

Approved pre-qualified bidders list for the Milpitas Sports Center Pool Repair Project No. 3408. Approved plans and specifications for Milpitas Sports Center Pool Repair and authorized the advertisement for bid proposals from pre-qualified bidders.

*29. Silicon Valley Regional Interoperability Authority

Approved and authorized the City Manager to execute the agreement with the Silicon Valley Regional Interoperability Authority (SVRIA).

PUBLIC HEARING

1. Water Conservation

City Engineer Steven Machida gave a report on the drought, supply of water, and recent requirements by state Governor and local suppliers (SCVWD and SFPUC) to reduce water use. He provided a great deal of data and information about the current situation statewide and here in Milpitas on water usage.

Items for the City Council to consider this evening, which he explained in detail:
1) Water conservation program, including increased use of recycled water, 2) Water conservation measures, 3) Water rationing program and, 4) Golf courses request for water.

Vice Mayor Montano strongly urged placing a door hanger on Milpitas residential customers' homes, so that all customers understood about the drought and steps to take.

There was some discussion on specific recommended times for watering in the City. Staff had recommended 8:00 am to 8:00 pm in order to best conduct enforcement efforts. Vice Mayor Montano wanted to recommend different hours for allowing watering. Council member Grilli felt it did not make sense to encourage watering in the afternoon, during the heat of the day.

Vice Mayor Montano asked staff about specific amounts of water used for various household uses of water by residences.

Mr. Machida explained a newer request for water to serve hillside golf courses in Milpitas. Staff's recommendation was to deny that request, based on the need to reduce consumption and a lack of method to move recycled water up those hills. They were working with the two golf courses to locate possible other water sources.

Councilmember Giordano asked what was happening with San Francisco Public Utilities Commission (since Santa Clara Valley Water District was mentioned). She wondered if customers would be penalized if the full water allocation was not purchased. "Take or pay" approach was explained and a lowered allocation amount. Mr. Machida stressed the need for much more outreach before any penalties.

Councilmember Barbadillo asked about the current allocation for Milpitas. Staff said it was based on a tiered system. He also asked about conservation programs in place prior to the current proposals for meeting the statewide 30% reduction required.

Next, Mayor Esteves opened the public hearing at 9:27 PM and invited speakers.

Garry Long, a Silvera St. resident, asked if renters who were abusing water could have the landlord penalize the tenants. If the City was fined by SCVWD or Hetch Hetchy, then the biggest reason would be due to the thousands of new residents coming in to the city. He wanted to know if the fine to the City would be passed on to customers then.

Robert Marini, Milpitas resident, commented on a lose-lose situation for the water situation and drought. The City already overcharged for water as it is and City ought to reward people for conservation.

Greg Jenner, of Spring Valley Golf Course, had worked with staff on its request for temporary water and seeking recycled water extension pipeline at the golf courses on the hill. He understood the staff recommendation and the golf courses did get temporary water supply from SCVWD. He thanked the City.

Heidi Wolff-Reid, Yosemite Drive resident, appreciated this mandate and some people should be penalized for over-watering. Monitoring water use of a building she owned, she checked monthly usage. Having a system to monitor it in real time would be so helpful, rather than the three months later when the bill comes. She was stymied by the times for water suggested by the staff recommendation.

Voltaire Montemayor, Milpitas resident, stated those efforts he agreed with. A solution to the drought could include managing reservoirs.

Frank Serpa, Calaveras Rd resident, said last year water stopped and he had a well for 47 years but it stopped. He got enough water so far for this year. He asked if wells were banned on city property and commented more must be done to conserve.

Tom Valore, Cardiff Place resident, just received his water bill but the next one would not come until the end of August. That was well into the summer to learn about his household water use. Financial penalties were not particularly useful, but those who could not afford those would hurt more. Water storage needed emphasis, he believed.

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

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(2) Motion: to adopt Resolution No. 8487 to (i) approve a Water Conservation Plan due to state water shortage, (ii) approve a new Capital Improvement Program project No. 7126 titled Water Conservation Program; (iii) approve budget appropriations of $600,000 from the Water Fund and $200,000 from the Park Funds, and (iv) deny requests from two Milpitas hillside golf courses for temporary emergency water supply

The motion also included specified hours for watering landscaping from 6:00 to 10:00 AM and 7:00 to 9:00 PM.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Councilmember Grilli asked if the motion included an adjustment to landscape watering times (as different from the staff recommendation). Councilmember Giordano then amended her motion to the specified hours noted.

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

City Attorney Ogaz read aloud the title of Urgency Ordinance No. 240.3 "An Urgency Ordinance of the City Council of the City of Milpitas Amending Chapter 6 of Title VIII of the Milpitas Municipal Code relating to Supplemental Water Use Restrictions as Required by State Law."

(3) Motion: to waive the reading of the Ordinance No. 240.3

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(4) Motion: to adopt Urgency Ordinance No. 240.3 for immediate water conservation efforts in Milpitas

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

At 9:51 PM, City Council took a break and reconvened at 10:01 PM.

UNFINISHED BUSINESS

2. RFP For Solid Waste Contract

City Engineer Steven Machida reported that the City was ready to go out for the Request for Proposals step in the process for solid waste services. He introduced Peter Deibler from the consultant firm, HF&H, and asked the City Council to release the RFP package next week. He discussed key terms of the contract. Mr. Machida commented on the next steps on the contract process, which included an amendment to the City's contract with HF&H to continue their work.

Vice Mayor Montano asked the consultant if he would foresee any bumps in the transition of services if another contractor was selected, compared to the current one. Mr. Deibler responded those were tricky, but his company had helped assist with that a couple times.

Mayor Esteves remarked that all current services would be retained in a new RFP. The Mayor wondered if the garbage collector would do once a year curbside pick up of large items only. Mr. Deibler replied that the team already included in the RFP the availability of on-call four times per year for special pick up.

Next, the Mayor invited speakers from the audience.

Garry Long, a Silveira Street resident, did not hear mention of "Dump Day" and would like to make sure that was included, since it was so helpful to residents. He urged having a debris box at home for a reduced rate, once per year.

Tom Valore, Cardiff Place resident, said the City was prohibiting submission of a proposal to get the best service for the best price. Disposal and hauling should be with one company, not separate submittals.

Voltaire Montemayor, Milpitas resident, said a good program was set up now with recyclables and other items put on the curb for pick-up.

Robert Marini, Milpitas resident, asked about the length of time of a contract. He wondered what residents could do if unhappy with service after just a few years.

Motion: to direct staff to issue a Request for Proposals for collection and disposal of solid waste, recyclables, and organics; and, approve Amendment No. 1 to the consultant agreement with HF&H Consultants for solid waste procurement services for $49,925 for the Capital Improvement Program, Project No. 3401

Motion/Second: Vice Mayor Montano/Councilmember Giordano

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

3. Info on Water and Sewer Rate Calculations

This item was not heard and would be continued to the next City Council meeting.

REPORT

5. City Council City Attorney Subcommittee

Councilmember Giordano reported that the City Attorney Subcommittee met twice (including Councilmember Grilli) and brought information and action items for this meeting. She thanked the Mayor for allowing the subcommittee to look at costs of the City Attorney's office, and she had served on the subcommittee in the past starting in 2005. She provided some history of past review of contract City Attorney services versus in-house. She compared costs in the cities of Campbell, Mountain View and Redwood City. Ms. Giordano noted the lack of considering costs for contracted outside legal services the last time. It was estimated to be a 20-40% savings, she calculated. The Subcommittee recommended going out for a Request for Proposals for outside legal services to save costs for Attorney services in the budget.

Councilmember Grilli referred to the request by the City Attorney to hire one new Deputy City Attorney, and how that would or would not save costs for outside legal services. She agreed with the report just stated by Councilmember Giordano. Ms. Grilli noted the varied areas of expertise available when using an outside legal firm, such as she had experienced when serving on the School Board.

Councilmember Barbadillo asked if the recommendation was to abolish the current in-house office of City Attorney and Councilmember Giordano said yes. He then asked if the Subcommittee considered the growth of Milpitas, in population and in more complex issues coming, including the Transit Area Specific Plan for example. Councilmember Grilli responded yes, in discussion of the needs of the City.

Vice Mayor Montano asked Councilmember Grilli what percent of legal services were for outside counsel, how much was spent on outside cases for how many hours, and did the City prevail. Outside specialists for outside legal services could charge high rates up to $400 per hour. She commented on the accessibility of the in-house, full time Attorney.

Mayor Esteves responded to the Vice Mayor, that last time the City contracted out, the City Attorney was present in the City offices.

After the City Council discussed some of the material provided in the agenda packet, City Attorney Mike Ogaz commented that there were differences of opinion on costs. He gave a memo to the Subcommittee, describing cost savings to have in-house counsel with some need always for outside counsel. He provided a variety of facts on court and other legal matters his office had handled in the last eight years. His memo to the Subcommittee noted that Attachment B (to a memo from City Manager) had referred to $2.5 million in outside costs, which included ABAG costs for counsel that were not part of his budget or his department. Those ABAG fees would continue no matter what, in or outside, which should be $1.8 million.

Councilmember Barbadillo asked Mr. Ogaz asked what else his office did beyond the court cases. Mr. Ogaz read from a lengthy memo he wrote to answer that.

Councilmember Barbadillo asked of the Subcommittee members, were all of those duties of the City Attorney considered in their report and Councilmember Giordano said yes.

Mayor Esteves felt the issue was: what structure for legal services should the City have. He was more in favor of retaining contracted legal services with opportunity for access to a versatile expertise in lawyers in all subject areas. In terms of accessibility, the attorneys would be always available. Rates would be the negotiated rate in the contract.

Next, the Mayor asked for comments from the audience.

Robert Marini, Milpitas resident, wanted to know if the effort was to eliminate or reduce current staff altogether. Some laws on the books regarding sewer rates were supposed to be proportional, and he had not heard the City Attorney advise Council of this fact.

Voltaire Montemayor, Milpitas resident, urged the City Council conserve the talent, with sides, flow, and productivity.

Vice Mayor Montano noted the population of the compared cities was much different than Milpitas, a unique city with lots of projects and cases going on right now with the current City Attorney, including defending police officers. The City was already outsourcing parks services. She felt there was a need to have a legal attorney to call our own, who was accessible all the time. It was important she felt to keep the City Attorney and keep the position in-house versus contracted out.

Councilmember Barbadillo urged his colleagues to not just consider cost savings on this issue, but rather all factors. He urged others to "deal with it" if there was a problem with current staff in City Attorney office and to define what the problem truly was.

Mayor Esteves responded to him, repeating what he had said earlier about the structure of the City Attorney's office.

Councilmember Grilli had no issues with any employee of the City Attorney's office. Her concern was with the request for additional staff and the need to keep costs down. She wanted to maintain quality of life for residents in this community, by controlling costs.

Motion: 1) to go to a contract legal service, 2) immediately go to a Request for Proposals (RFP) process (could use examples from other cities that have done so) with the Assistant City Manager helping to facilitate the RFP process, and/or hire an outside legal consultant to work with the ACM to do the RFP process, and 3) set a meeting in Closed Session of the City Council by the first week of July to address the current legal staff that's in place right now

Motion/Second: Councilmember Giordano/Councilmember Grilli

City Attorney Ogaz commented on the first part of the motion, which was not on the agenda for going to contract legal services. Mr. Ogaz said the Council would go beyond Brown Act to consider the first item. He suggested restricting the motion to the second item and third item in the motion.

Councilmember Giordano expressed her intent was to look at and go forward with contracting out legal services, otherwise they would not implement the RFP process.

Mayor Esteves said he was not a lawyer. When he requested for this to be on the agenda, he said it should be more than information; rather, as an action item for the Council. He commented on what the recommendation of the City Attorney subcommittee was, as the staff report noted. He was comfortable voting on the recommendation of the sub-committee. The Mayor repeated the motion that was made by Councilmember Giordano.

Motion carried by a vote of: AYES: 3
NOES: 2 (Montano, Barbadillo)

NEW BUSINESS

8. Ballot Measures T and Z — This item was not heard and would be continued to the next City Council meeting.

9. Quarterly Economic Development Report — This item was not heard and would be continued to the next City Council meeting.

ORDINANCES — Two ordinances were adopted on the consent calendar.

RESOLUTIONS — Three resolutions were adopted on the consent calendar.

17. Resolution - affordable housing policy

City Manager Williams had asked to remove this item from consent, due to a request from the BIA organization to address it. However, the representative from that organization was no longer present (at 11:24 PM).

Councilmember Grilli supported the goal of providing affordable housing, but needed a legal opinion as to how defensible the policy would be. She had concerns that the City would be liable, if challenged, since the nexus study was not yet completed. It was a matter of the legal standing issue.

City Attorney Ogaz commented back to her that this policy would be supportable from his point of view (especially due to a court decision about San Jose announced this week.).

Mayor Esteves felt the 5% amount in the proposed policy was a good effort, and he would support it.

Motion: to adopt Resolution No. 8491 approving condition of approval language to require affordable housing in all new residential developments

Motion/Second: Vice Mayor Montano/Mayor Esteves

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

AGREEMENTS — Twelve items were approved on the consent calendar.

ADJOURNMENT — Mayor Esteves adjourned the joint meeting at 11:30 PM.

The foregoing minutes were approved by the Milpitas City Council on August 4, 2015.

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Mary Lavelle
Milpitas City Clerk